

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ENCORE SERIES, INC., doing :
business as THE PHILLY POPS, : Case No. 23-CV-01421-MRP
:
Plaintiff, :
:
Philadelphia, Pennsylvania
vs. : July 26, 2023
: 11:02 a.m.
THE PHILADELPHIA ORCHESTRA AND :
KIMMEL CENTER, INC., ET AL., :
:
Defendants. :
:
. :

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1 JULY 26, 2023

11:02 A.M.

2 THE COURT: Before we begin today, I just want to make
3 sure that we're all on the same page. We are here today to have
4 an evidentiary hearing based on Plaintiff's motion for a limited
5 preliminary injunctive relief that was filed on June 8th of 2023.
6 Specifically, that a relief the Plaintiff was seeking was to
7 reinstate The Philly POPS at Verizon Hall in the Kimmel Center
8 for Performing Arts for the upcoming 2023/2024 concert season.
9 And that would be pending a trial on the merits and the issues
10 before me. Is that correct, gentlemen?

11 MR. DESTEFANO: Yes, it is.

12 THE COURT: Okay.

13 MR. REED: Yes, Your Honor. Thank you.

14 THE COURT: Thank you very much. So I believe we
15 should probably start with Mr. DeStefano since it is your burden
16 here today. And specifically, we are looking at -- and I know my
17 staff has spoken with you both with regards to what our focus is
18 here today for the purposes of this hearing; is that correct?

19 MR. DESTEFANO: Yes. Specifically, that is to address
20 the issue of irreparable harm if The Philly POPS was not put back
21 or reinstated in the Kibble Center Verizon Hall.

22 THE COURT: That's correct. So please -- and I would
23 just ask that you both use the microphones while you are
24 speaking. I want to -- this is going to be recorded in lieu of a
25 physical stenographer. And we find that sometimes voices are not

1 picked up and recorded properly if you're not speaking into the
2 microphone. So gentlemen, if I interrupt to ask you to keep your
3 voice up, I mean no disrespect. I just want to make sure we have
4 a solid record here.

5 MR. DESTEFANO: Okay.

6 THE COURT: Thank you.

7 MR. DESTEFANO: Does the Court prefer a brief opening
8 statement before witnesses or just go right to the witnesses?

9 THE COURT: I tend to allow you to run your case the
10 way you see fit, sir.

11 PLAINTIFF OPENING STATEMENT

12 MR. DESTEFANO: Your Honor, essentially it's the
13 Plaintiff's contention that the only way to avoid or address the
14 irreparable harm that has befallen or will befall Philly POPS is
15 to reinstate the Phillip POPS for a full concert season at
16 Verizon Hall. And that would of course entail the ticketing at
17 as well, which is also controlled by the Plaintiff in this case.

18 And why is that so? Simply put, the evidence will show
19 that the Philly POPS is out of business, liquidated if it is not
20 allowed to perform for the 2023/'24 concert season. That's far,
21 far, exceed its revenues, which right now are zero. It is highly
22 insolvent. It will not be able to redeem tickets, mostly season
23 tickets, but other tickets sold for concerts at Verizon Hall
24 during the 2022/'23 season, which as we state in our papers, was
25 abruptly cut short by the POPS' eviction from Verizon Hall.

1 And I can just give you a little flavor of the
2 evidence. There's approximately \$1.1 million dollars in tickets
3 that were sold. They can be redeemed by performing makeup
4 concerts. And to perform makeup concerts, the only available
5 venue would be Verizon Hall. Indeed these tickets were sold for
6 Verizon Hall.

7 So a short version of the argument here is, and what
8 the evidence will show, is simply that the POPS is out of
9 business unless it's reinstated and will cease to exist as a
10 Philadelphia symphony orchestra.

11 Now, there's also a contention that we have is that the
12 goodwill of both of patrons, ticket holders, corporate sponsors,
13 and private and governmental contributors to be grant monies has
14 been severely damaged by the POPS ejection or eviction and
15 inability to perform. And the only way to earn back the
16 credibility, the goodwill of its customers, is to continue
17 performing for this upcoming season in Verizon Hall. Without
18 that, it will only deepen the example. POPS has been advised
19 that by several corporate sponsors, good long time corporate
20 sponsors, Comcast, IBC, Parks Casino, and others which will be --
21 that we're sponsoring concerts. And unless you're playing
22 concerts, there's nothing for us to sponsor.

23 Now, if they're reinstated, they'll be able to say,
24 okay, corporate contributor, we are performing concerts and we'd
25 like you to help sponsor. So two areas of revenue, ticket sales

1 and contribution, which would include corporate sponsors, public
2 and private grants will have dried up and will dry up or
3 extinguish certainly if another year goes by or two or three or
4 whatever time it takes to adjudicate this somewhat complex
5 antitrust case.

6 Also, it's the musicians. The evidence will show that
7 we could get the musicians back. There's goodwill that has been
8 lost among the musicians because they haven't been paid. Why
9 haven't they been paid? They haven't been paid because there's
10 no revenue to pay them. And no revenue to pay them is because
11 they're not able to perform concerts or obtain contributions.

12 If another year or two years goes by, I think the Court
13 can take judicial notice, you know, people come and go. I mean,
14 will they ever be able to assemble that orchestra that's been
15 playing together for I'm going to say somewhere between 20 and 40
16 years into a POPS symphony orchestra if a year goes by or some
17 equally long or longer period goes by and they're not able to
18 perform? So they must perform to stay in business. And they
19 can't perform because the only available venue to them is Verizon
20 Hall.

21 So with that, I would like to call Mr. John Meko.

22 THE COURT: But before we proceed --

23 MR. DESTEFANO: Yes.

24 THE COURT: -- since I did allow you the opportunity to
25 have an opening statement, I would also like to extend the

1 courtesy to Mr. Reed if he wishes at this time.

2 MR. DESTEFANO: Oh, okay. All right.

3 THE COURT: To also -- please.

4 MR. REED: Yes, Your Honor. Thank you.

5 THE COURT: Thank you.

6 DEFENDANT'S OPENING STATEMENT

7 MR. REED: Your Honor, Steven Reed on behalf of the
8 Defendants. I'm going to do something a little bit different
9 than I planned if you'll indulge me. I think it might make sense
10 for me to kind of lay out our position as you invited. And also,
11 put some documents in front of you that I intend to go through
12 with the witnesses so you can kind of get some -- put some meat
13 on the bones if you will. So with your permission, I have a
14 binder for your clerk and for you.

15 THE COURT: Please. Thank you.

16 MR. DESTEFANO: I'm going to object to these documents.
17 I've looked at them. And my objection, Your Honor, is they're
18 not relevant to the narrow issue of irreparable harm. They go to
19 other issues, probability, success on the merits, or likelihood
20 that maybe some other greater harm befalling one party or the
21 other. But they are -- at least I thought the Court was very
22 emphatic that this hearing would be limited to irreparable harm
23 if the POPS was not put back into Verizon Hall. And that the
24 other issues need not be addressed at this hearing.

25 THE COURT: Here's what -- I was very clear about that.

1 And what we'll do, Mr. Reed, since you have these documents,
2 they'll remain with my clerk until you lay the proper foundation
3 with whatever witness is available here today as to where they
4 would fall in specifically with the irreparable harm component.

5 MR. REED: Absolutely, Your Honor. I'm happy to tie
6 these documents precisely to that issue. In terms of foundation,
7 Your Honor, I just want to make sure that we're meeting your
8 expectations. This is something that I discussed with Mr.
9 DeStefano before coming in this morning. I think the law in the
10 Third Circuit is clear that you have discretion that the Federal
11 Rules of Evidence don't need to apply, be applied with particular
12 rigor in this context. You can consider what might otherwise be
13 subject to a hearsay exception.

14 MR. DESTEFANO: I don't agree with that, but yeah.

15 MR. REED: Your Honor, if I could finish please. To
16 the extent that we need to lay a foundation, I'm happy to do
17 that. It will take more time with the witnesses, but I'm happy
18 to do that, but I don't think you're required.

19 THE COURT: I understand that. Unfortunately, I tend
20 to be a stickler for the rules of evidence.

21 MR. REED: Right.

22 THE COURT: And proper foundation should be laid with
23 the witness.

24 MR. REED: Happy to address that. I just would point
25 you to the Third Circuit's decision, Koh, K-O-H, which says it's

1 not necessary --

2 THE COURT: Understood.

3 MR. REED: -- and I will follow your lead.

4 THE COURT: Thank you.

5 MR. REED: So I will focus on the question that you
6 asked us to address at this hearing. And to do that, the first
7 step is to focus on the right standard that must be applied.

8 This is -- and it's clear, the record is I don't
9 believe in dispute, but I'll point you to the documents. The
10 contract that the POPS once had with my clients has expired. It
11 expired on June 30th of this year. You'll see that in tab, when
12 we're ready, Tab 2 of the binder before you. But the point is
13 there was a 2018 license agreement that had a five-year term that
14 expired on June 30.

15 So as such, what the POPS is looking for you to do is
16 enter a mandatory injunction. Not one that maintains the status
17 quo, but one rather that requires my clients to do something
18 differently than they obligated to do now.

19 And there's a heightened standard, and it's a really
20 important point, Your Honor. So I want to make sure that I'm
21 very clear on it. This is a mandatory injunction and the
22 standard that has to be applied is articulated in the Hope
23 decision. It's a Third Circuit decision from 2020. It's cited
24 in our briefs. And it says that mandatory injunctions require
25 the movant to meet a heightened standard among other things.

1 When we talk about irreparable harm, which is the focus of the
2 hearing today, there must be a clear showing of immediate harm.
3 That clear showing of immediate harm that comes out of another
4 Third Circuit decision, that's the Hohe, H-O-H-E. It's a little
5 bit confusing. We have Hope and Hohe, but H-O-H-E, that's a 1989
6 Third Circuit decision. Again, you'll find the full cite in your
7 briefs, but I'm happy to provide a pin site if you need it.

8 Again, I'll focus on that standard. A clear showing of
9 immediate harm. So first of all, the evidence will show, and the
10 briefs certainly failed this standard. The POPS have not made a
11 clear showing of harm. If you look at their papers, what they
12 filed with Your Honor, the motion referred simply to a statement
13 that said they would be forced to consider bankruptcy. That's
14 all they said. Those were their moving papers. That was their
15 assertion. We cited the Third Circuit for Instant Freight
16 decision. That one's an '89 decision as well, 1989 cited in our
17 papers. It says merely considering bankruptcy is not enough to
18 establish that standard.

19 Now in their reply brief, they describe the harm
20 differently. Then they said two things. They said they're
21 highly likely to be unable to perform concerts. And two, they
22 talked about loss of reputation, which you heard from Mr.
23 DeStefano this morning. Again, they didn't say the bankruptcy
24 was imminent, that they were highly insolvent or anything like
25 that. They said highly likely not to be able to perform

1 concerts. So it's a bit of a moving target. And so, hopefully
2 Mr. DeStefano will come forward with some evidence. But right
3 now he hasn't. He's had argument and his argument has been both
4 inconsistent and is insufficient under the law to meet their
5 standard. It just is. You know, and they need facts. They don't
6 need assertions.

7 They also have to show, Your Honor, that harm would be
8 immediate. Again, they haven't made that showing at all. In
9 fact, you have to wonder about the long delay that they've so
10 far, right? So they point back to the suspension of their status
11 as a resident company at the Kimmel Center, which occurred back
12 in January. So now they wait six months to June to file their
13 motion. Then they're saying, well, we're barely forced to
14 consider bankruptcy. And they're asking for relief that's into
15 the future into September.

16 So I think case after case we cited some of them.
17 We'll tell you that that kind of inaction really undercuts their
18 contention that this harm that they're concerned about is
19 immediate to begin with.

20 But they also Your Honor and the facts will show this.
21 They have -- can't show, haven't shown and can't show that the
22 relief they seek is necessary for them to avoid the harm. There
23 are multiple venues in this region and beyond where they can
24 perform. If their goal is to make money by putting on
25 performances, if their sponsors will only sponsor them if they

1 perform, they're free to do that elsewhere. Yes, they've done it
2 in the past at Verizon Hall and the Kimmel Center, but if you
3 look at -- and this Tab 24 of your binder. If you look at their
4 website, what they describe about, say about themselves, and they
5 frankly say this in more than one place, they do in press
6 releases as well, they'd say POPS is the principal orchestra of
7 Met Philadelphia.

8 They go on to say that POPS performs at venues
9 throughout the mid-Atlantic region. They don't say we only play
10 at Verizon Hall. We can only play at Verizon Hall. They're out
11 there advertising. In fact, we know they do. And we'll put on
12 evidence of that. You might even take judicial notice of the
13 fact that The POPS performed outdoor/indoor. You'll hear more
14 about The Met Philadelphia. It actually has a bigger seating
15 capacity than Verizon Hall. If they're looking to perform
16 somewhere, there are places where they can go if they're willing
17 and able to pay.

18 That's been the problem with us. No doubt it might be
19 a problem for others. They'll want to be paid too, but that
20 doesn't mean they get to -- we have to be forced to accommodate
21 them and foot the bill because others won't -- aren't willing to
22 do that.

23 And if you look, and you heard Mr. DeStefano talk about
24 tickets that were sold for Verizon Hall that were not performed,
25 well one of them notably was this Get Up, Stand Up concert. That

1 was one that was scheduled to occur in February. And again, if
2 you look at their website, if you look their press releases, the
3 rescheduled that to be held at The Met Philadelphia. And they
4 were going to honor tickets sold for that concert at The Met
5 Philadelphia. Seating capacity exceeds what's in Verizon Hall.

6 Now, that concert didn't go forward. Maybe we'll hear
7 today why that didn't go forward at Met Philadelphia. But the
8 point is, even -- look, we're all sympathetic to the ticket
9 holders who paid money to see concerts. It's unfortunate that
10 POPS haven't been able to meet their obligations, haven't been
11 paying their bills. But it's not accurate to say that the only
12 place that they can put on those performances is Verizon Hall.
13 It's just not true and they don't have the legal right to do
14 that.

15 So the relief that they're seeking from you is not
16 necessary to avoid the irreparable harm that they're claiming,
17 which is one of the requirements under the law. Your Honor, it's
18 also, the relief is also not sufficient to set to avoid the harm.
19 You heard it this morning. They are way, way in debt according
20 to Mr. DeStefano. Maybe we'll see some evidence of that. But
21 assuming that's the case, we heard they sold over a million
22 dollars of tickets that they haven't paid. This amount is in
23 dispute. But we contend they owe us a million dollars for past
24 performances, including the last Christmas season they performed,
25 which they never paid for. They also -- they're in a lawsuit

1 with their musicians. They owe --

2 THE COURT: Mr. Reed.

3 MR. REED: Yeah?

4 THE COURT: I want to be careful. These are opening
5 statements. So I'm going to give you a chance to sum up after we
6 have evidence, but some of these are definitely touching on what
7 I expect to be -- hear from the witness's mouth.

8 MR. REED: Your Honor, I will keep it short. I
9 appreciate the reminder. I just wanted to give you a preview of
10 what you're going to hear.

11 THE COURT: I appreciate advocacy, but I want to make
12 sure we're focused on the opening.

13 MR. REED: But in any event, so just the opening
14 argument on that point is it's not sufficient because they can't
15 make money and they don't have musicians to perform. Simply put.
16 None of the cases that they cite, and they only cite a couple on
17 this issue. One is Tasty Baking. The other is Group ASEB
18 (phonetic) support their case. I can address that at closing. I
19 can address that at closing. But they don't have case support.
20 They can't point to another case where -- on these facts where a
21 court entered a mandatory injunction like here. Tasty Baking was
22 a hold separate. It was actually specifically to maintain the
23 status quo when competitors were combined and completely
24 different set of facts and circumstances than here.

25 And let me just -- then I'll just wrap up and make the

1 point. I realize that we're focused on the irreparable harm
2 element, one of four elements that they are required to satisfy.
3 But there's a reason why courts obviously must also consider
4 likelihood of success. And that's because, well, The POPS may
5 have a need to use our hall. They may want to use our hall. The
6 key point is they don't have the right to use our hall. And that
7 goes right to the insufficiency. They have to prove a clear
8 likelihood of a success. It's a heightened burden again because
9 of the mandatory injunction. We addressed that in our papers.
10 And if you permit me, I'll address it later in closing, but I'm
11 not going to get into it now.

12 THE COURT: Much appreciated. Thank you, sir.

13 MR. REED: Thank you, Your Honor.

14 THE COURT: First witness please, Mr. DeStefano.

15 MR. DESTEFANO: Yes. John Meko, please.

16 THE CLERK: Please raise your right hand.

17 JOHN MEKO, PLAINTIFF'S WITNESS, SWORN

18 THE CLERK: Thank you. Please state your full name and
19 spell your last name for the record.

20 THE WITNESS: John Meko, M-E-K-O.

21 THE CLERK: Thank you.

22 THE COURT: Good morning, sir.

23 THE WITNESS: Good morning.

24 MR. DESTEFANO: Before I examine Mr. Meko, I want to
25 just for the record place an objection here. I mean, it was our

1 clear understanding that this hearing would be strictly limited
2 to the irreparable harm element. And frankly because of that, I
3 did not come prepared to address likelihood of success on the
4 merits, public interest, or any of the other elements.

5 Therefore, I object to Mr. Reed arguing at the podium
6 or getting into evidence that goes to factors other than the
7 irreparable harm if The POPS is not placed back into Verizon Hall
8 on a temporary basis pending adjudication of this case. So you
9 know, I apologize.

10 THE COURT: That's fine. I understand that and your
11 objection is sustained. Quite frankly, I did ask for
12 specifically for us to focus on the irreparable harm based on the
13 filings from both sides. That is where this Court is finding the
14 issues beyond the threshold. We are not -- we have some wiggle
15 room on whether or not we get through that gateway.

16 MR. DESTEFANO: Right.

17 THE COURT: Right? And the caselaw says I need to be
18 focused on the first two factors, success on the merits and
19 irreparable harm.

20 MR. DESTEFANO: Right.

21 THE COURT: Right? I've heard the arguments contained
22 in your briefs with regard to success on the merits. They've
23 been noted Mr. Reed. My concern is irreparable harm and that's
24 where I find the most salient issue between the two of you that I
25 need to suss (sic) out to get through that gateway.

DIRECT EXAMINATION

BY MR. DESTEFANO:

Q All right. What -- are you a current board member of The Philly POPS?

A I am.

Q Okay. And could you tell us what committees of the board that you are a member of or the chairman of?

A I'm the Chair of the Finance Committee, the Treasurer, and previously was Chair of the Development Committee.

Q Okay. Now, I take it the Management Committee assists in managing or supervises the management of the Philadelphia POPS Orchestra?

A Yes.

Q Okay. The Development Committee does what, sir?

A Fundraising.

Q Okay.

A Voluntary contributions.

Q And that would both be private and public contributions?

A Foundations, individuals, public, yes.

Q All right. And for how long have you been engaged in development activities on behalf of The POPS?

A Twelve years or so, something like that.

Q How long have you been a board member?

A About the same time.

Q Okay. The Finance Committee deals with the finances of the

1 Philadelphia POPS?

2 A Correct.

3 Q Okay. Let me go back a little bit. Do you have any other
4 jobs while also serving on the board of the Philly POPS?

5 A It's a volunteer position.

6 Q Okay.

7 A So yes, I'm the Executive Director of the Union League
8 Legacy Foundation.

9 Q Okay. And executive director I take it, supervises all
10 aspects of the Union League Legacy Association?

11 A Correct.

12 Q Including fundraising, including finances, including
13 whatever else happens. How long have you been engaged in that
14 job?

15 A Seventeen years.

16 Q Okay. Now, prior to your job with the Union League Legacy
17 Fund, what did you do?

18 A I was at the Academy of Natural Sciences where I was Vice
19 President for Marketing and Development. And then previously a
20 variety of other nonprofit organizations.

21 Q Okay. And when did you graduate from college?

22 A 1990.

23 Q Which college?

24 A La Salle University.

25 Q What's your degree in?

1 A Finance.

2 MR. DESTEFANO: Your Honor, on the basis of that
3 foundation, I'd like to offer Mr. Meko to the Court as an expert
4 witness in the charitable 501(3)(c)(sic) corporations.

5 MR. REED: Your Honor, I object.

6 THE COURT: Basis?

7 MR. REED: Well, many. One was there was no disclosure
8 of expert witnesses in this case. Your chambers asked for
9 disclosure witness. We had agreement with Mr. DeStefano that we
10 would disclose the witnesses we intended to call.

11 MR. DESTEFANO: We spoke, Mr. Reed?

12 THE COURT: Hold on. Mr. DeStefano, let be very clear
13 about my courtroom.

14 MR. DESTEFANO: Yeah, I won't interrupt.

15 THE COURT: Thank you. I don't allow interruptions.
16 You are speaking to the Court, not each other. Please,
17 gentlemen. Mr. Reed?

18 MR. REED: Thank you, Your Honor. So had we been
19 informed that they intended to offer an expert witness, we might
20 have brought our own expert witness. I also question the
21 witness's expertise. If necessary, I'd like to conduct a short
22 voir dire. But I don't think he's appropriately presented to you
23 as an expert witness in this hearing.

24 THE COURT: I'm not sure how you're -- Mr. Meko, with
25 all due respect, Mr. Meko is going to fulfill the criteria for an

1 expert witness under the rules of evidence, sir.

2 MR. DESTEFANO: Well, under the rules of evidence, a
3 person can be qualified to give opinion testimony as an expert by
4 experience, by education, or some combination of those. This
5 person has a degree in finance. He's been the executive director
6 and/or working for on a voluntary basis in the case of POPS, but
7 also on a paid basis of nonprofit corporations for his entire
8 career after graduation from college. I would say he has the
9 requisite experience. I would say that for matters of financing,
10 he has a bachelor's degree in finance and has years of experience
11 in financial matters, both as the executive director or voluntary
12 finance committee chair of Philly POPS.

13 It's not like he's been doing it for two or three or
14 four or five years. It looks like he graduated from college in
15 1990. He's been doing this sort of work for 20 some odd years.
16 So I think he does qualify. I disclosed Mr. Meko along with what
17 he does and his occupation and what his positions are. There
18 was, I think, aside from the Court's request to give the Court a
19 list of witnesses and how long it would take, et cetera, et
20 cetera. There was no obligation. The Court imposed no obligation
21 to disclose any witnesses or documents. We did it on a voluntary
22 basis. And on a voluntary basis, we disclosed Mr. Meko.

23 THE COURT: Thank you. Your objection is sustained.

24 MR. REED: Thank you, Your Honor.

25 /////

1 BY MR. DESTEFANO:

2 Q All right. Mr. Meko, has The POPS looked, searched for
3 other venues in the greater Philadelphia area once it became
4 aware that it was being evicted from the Verizon Hall?

5 A We had been -- yes, yes.

6 Q And has The POPS been able to find any suitable venues for
7 the performance of a series of symphony concerts?

8 A Not for subscription concerts, no. Series as you say.

9 Q And why is that, sir?

10 A So our subscription patrons are -- had been at Kimmel or the
11 Academy or that block forever since the POPS founding. And that's
12 what they are used to. That's what our audience is looking for.
13 There are all kinds of reasons from an audience perspective. We
14 did, as was mentioned, try to move to The Met and it was a
15 disaster.

16 Q How was it a disaster?

17 A We sold approximately \$5,000 in tickets. We had angry
18 patrons that were refusing to even consider going there. They
19 had been going to the Kimmel forever. They bought tickets for
20 the Kimmel, and it did not work.

21 Q Was there scheduling availability?

22 A There was, but it was difficult. And, you know, our
23 standard Sunday shows could not happen at The Met for example, so
24 it was difficult.

25 Q Do you know of any other suitable venue for performance of

1 symphony concerts other than Verizon Hall? And again, in the
2 Philadelphia metropolitan area?

3 A Not for the subscription concerts. We have done other one-
4 off concerts of various types. But not for subscriptions, no.

5 Q What makes the Verizon Hall at the Kimmel Center, in your
6 view, the only place for the performance of symphony concerts on
7 a series basis rather than a one-off basis?

8 THE COURT: Mr. DeStefano, I'm going to ask that you
9 allow the witness testify versus you.

10 MR. DESTEFANO: I will.

11 THE COURT: Thank you.

12 THE WITNESS: Well, Kimmel Center, Verizon Hall was
13 built for the subscription concerts. It's location -- it's other
14 facilities -- for example, The Met has a stage that's barely
15 adequate and nothing else. For example, there's no place for a
16 choir, which is essential to many of the concerts that we do.
17 You know, the Kimmel Center was built for Philly POPS and like
18 orchestras to perform there. And there's nothing else in terms
19 of location or facilities in the region that can sustain
20 subscription concerts in the numbers and on the dates and in
21 location.

22 BY MR. DESTEFANO:

23 Q And when you use the term subscription concerts, please
24 explain to the Court exactly what you're talking about.

25 A So The POPS subscription series, are a series of concerts

1 that are typically three concerts. Friday, Saturday, Sunday
2 concerts that are at Kimmel. And subscribers subscribe for
3 typically the entire run of the season, so that's a subscription.

4 Q Okay. Does the POPS or has the POPS historically put on
5 what's been referred to as Christmas concerts?

6 A Yes.

7 Q And please explain what those are?

8 A So they are not subscriptions in the same way. They are
9 concerts that are at Kimmel typically that are ten or so concerts
10 at the Kimmel Center. They are not part of subscription series.
11 Individuals buy tickets. Subscribers often buy tickets, but
12 they're not part of the series.

13 Q Okay. Is there any place else in Philadelphia or the
14 Philadelphia metro area where the POPS would be able to play
15 their Christmas series of contents.

16 A We did do one show at The Met, I believe, a couple years
17 ago. It was the -- I believe Salute series, so it wasn't part of
18 a ticketed kind of series. It did not go well from a production
19 standpoint and other things. So no, in my opinion there's no
20 place else to go.

21 Q Does The Met have a choir loft of facilities for a choir or
22 an organ?

23 A They do not.

24 Q Are those types of facilities necessary for the Christmas
25 show?

1 A The Christmas show, absolutely.

2 Q Christmas shows?

3 A Shows.

4 Q Okay. I take it pursuant to your duties with the board of
5 directors of The Philly POPS, you are familiar with the Philly
6 POPS' financial position?

7 A I am.

8 Q Okay. Does The Philly POPS have accounts payable and/or
9 debts?

10 A We do.

11 Q And what are the magnitude of those debts?

12 A So they're close to \$2 million dollars in various debts to
13 vendors and others, \$1.1 million dollars in tickets that we need
14 to, you know, that are -- we need to perform to redeem. And then
15 as was mentioned, some amount for Kimmel Center Philadelphia
16 Orchestra.

17 THE COURT: I'm sorry, I just want some clarification
18 here. You said there's approximately \$2 million in debts to the
19 vendors. And is that \$1.1 million on top of the \$2 million?

20 THE WITNESS: Correct. It's about -- it's probably
21 close to \$2 million dollars. There's some dispute among some of
22 those. So I think if we took out the disputed amounts, it would
23 probably be about 1.7. But there are disputed amounts. And then
24 1.1 in tickets.

25 THE COURT: Thank you.

1 BY MR. DESTEFANO:

2 Q Okay. Without playing concerts, does the POPS have any
3 source of revenue? Do you have money in the bank?

4 A No.

5 Q Okay.

6 A We do have small amounts of grants for educational programs
7 that we do.

8 Q But they're earmarked for educational programs?

9 A Correct.

10 Q All right.

11 A Correct.

12 Q All right. But aside from that, does the POPS have any
13 money with which to pay its debts or accounts receivable?

14 A Nothing material.

15 Q Okay. Is the POPS insolvent at this point in time?

16 A Yes.

17 Q All right. Would it be accurate to say that it's grossly
18 insolvent?

19 MR. REED: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. DESTEFANO:

22 Q So at present, can the POPS continue its business either on
23 a limp along basis or whatever without being put back into
24 Verizon Hall?

25 A The Philadelphia --

1 MR. REED: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. DESTEFANO:

4 Q Well, based upon your assessment of the financial position
5 and your experience and skill in financial matters, both with
6 respect to the POPS and other things, and your perception, sir,
7 what is your opinion as to whether or not the POPS can continue
8 its business?

9 MR. REED: Objection, Your Honor.

10 THE COURT: Sustained. He has not been qualified as an
11 expert.

12 MR. DESTEFANO: He can give a lay opinion, Judge, under
13 the rules as long as it's based upon perception, facts that he
14 perceives.

15 THE COURT: Counsel?

16 MR. REED: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. DESTEFANO:

19 Q Are you familiar with the term involuntary bankruptcy?

20 A I am.

21 Q What does that mean to you, sir?

22 A That those that you owe money to would force you into
23 bankruptcy.

24 Q Do you believe that there is a substantial likelihood that
25 that will happen without being able to perform concerts at

1 Verizon Hall for at least the upcoming season?

2 A Yes.

3 Q Without being placed into Verizon Hall or reinstated at
4 Verizon Hall, would the POPS be able to obtain enough money not
5 just to pay its debts but to fund a plan of reorganization?

6 MR. REED: Objection, Your Honor.

7 THE COURT: I'm going to ask you to rephrase that.
8 Sustained, but please rephrase, Mr. DeStefano.

9 MR. DESTEFANO: Okay.

10 BY MR. DESTEFANO:

11 Q Based upon your knowledge of the financial condition and
12 based upon your testimony that there's no place else to play,
13 would the POPS be able to raise money if not allowed to perform
14 at Verizon Hall going forward?

15 A No.

16 MR. REED: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: No. I don't see how we can raise money
19 from our corporate sponsors and friends, from our individual
20 sponsors in any significant degree without getting in and
21 performing as the Philadelphia POPS Orchestra, let alone from our
22 friends in the public sphere who are wanting to help us. But
23 it's really contingent on performing at the Kimmel Center.

24 BY MR. DESTEFANO:

25 Q In connection with your activities or development activities

1 on the development committee, which you are chair of, do you have
2 contact with actual and potential corporate sponsors?

3 A Yes. To be clear, I was former chair of development. I'm
4 not currently the chair.

5 Q Okay.

6 A But yes, I do.

7 Q All right. And have you asked your corporate sponsors to
8 sponsor the POPS going forward in the absence of any
9 performances?

10 A No, because that would be an absurd ask.

11 Q What do your corporate sponsors sponsor?

12 A The concerts at Kimmel, for the most part. The vast
13 majority of them are sponsoring concerts at the Kimmel Center.

14 Q If the POPS is allowed to perform a series of concerts at
15 the Kimmel/Verizon Hall, do you believe that you can get some
16 sponsorship money?

17 A Yes.

18 Q And is that based upon your past experience?

19 A Yes.

20 Q And also your conversations with the corporate
21 sponsors -- historic corporate sponsors?

22 A Yes.

23 MR. REED: Objection, Your Honor. He's leading the
24 witness.

25 THE COURT: Sustained.

1 BY MR. DESTEFANO:

2 Q Can you list for us who your corporate sponsors historically
3 have been?

4 A Sure. Comcast, Citizen's Bank, Bank of America, IBX,
5 Haverford Trust, Giant Foods. Forgive me, there are others.

6 Q Okay. And is there any chance or prospect of getting them
7 to sponsor the Philly POPS without the Philly POPS being able to
8 play concerts?

9 MR. REED: Objection, Your Honor. He's asking the
10 witness to speculate. He hasn't built the foundation.

11 MR. DESTEFANO: I think there is a foundation. He
12 spoke to these people. He's been in the development and
13 fundraising business a long time.

14 THE COURT: Well, that part is speculation. Whether or
15 not he's actually had conversations with these sponsors is
16 something different. So you need to lay a foundation before I'll
17 allow that in. Sustained.

18 MR. DESTEFANO: Yeah. Yeah.

19 BY MR. DESTEFANO:

20 Q Have you had conversations with any of these sponsors?

21 A Yes.

22 Q And as a result of those conversations, I'll ask the
23 question again, do you believe that there's a prospect of getting
24 sponsorship if --

25 A Yes. If we can get back in --

1 Q -- if you can get back into Verizon Hall?

2 A -- then we can get sponsorship from at least several of
3 those.

4 Q Are you familiar with the availability and the historic
5 public and/or private grants or contributions that the POPS has
6 been able to obtain --

7 A Yes.

8 Q -- over the years that you've been involved in this?

9 A Yes.

10 Q Have you spoken with or been advised of conversations or
11 efforts to obtain those grants recently --

12 A Yes.

13 Q -- since eviction?

14 A Yes.

15 Q And on the basis of that, do you believe that any of those
16 grants will be forthcoming if the POPS cannot or is not in the
17 business of playing concerts at Verizon Hall?

18 A I -- I don't see how we can get any of that funding in any
19 substantial way without performing in the Kimmel Center.

20 Q Okay. And is there anything else you can do that people are
21 willing to pay tickets for but perform concerts?

22 A No. I mean, our -- our ticketing is entirely for people
23 paid for the concerts. That's it.

24 Q Will the POPS be able to repay or redeem the tickets already
25 sold without the ability to perform concerts going forward at

1 least for the '23/'24 season at Verizon Hall?

2 A No.

3 Q Let's talk about musicians. I think Mr. Reed raised the
4 issue of musicians. First of all, are you at least an amateur
5 musician?

6 A I am?

7 Q How about your dad?

8 A Dad was a -- we're trumpet players.

9 Q How about your son?

10 A He's a trumpet player.

11 Q So you have some familiarity with musicians. And have you
12 dealt with musicians that had been assembled to play for the POPS
13 going back a number of years?

14 A I know some of them.

15 Q All right. All right.

16 A I've had no direct contact with any of the negotiations with
17 the orchestra, anything like that.

18 Q Okay. All right. Do you believe that you will have any
19 problem assembling musicians in order to play at the Verizon Hall
20 if you're reinstated and you come up with a schedule of concerts?

21 MR. REED: Objection, Your Honor.

22 THE COURT: Sustained. You need to lay a foundation
23 for that, sir.

24 BY MR. DESTEFANO:

25 Q Have you lost goodwill with your musicians? You meaning

1 Philadelphia POPS.

2 A Yes.

3 Q How so?

4 A We haven't been able to perform. These are musicians that
5 many of them, this is a large of their livelihood. This is what
6 they do. And we have not been able to get back into Kimmel and
7 perform. So yes, of course, that's a loss of goodwill.

8 Q And do you owe the musicians money from the last few
9 performances or from any other activity that they've done on
10 behalf of the POPS that you're not able to pay, given your
11 current financial ability?

12 A There's an amount dispute, but I'm not involved in the
13 details of that.

14 Q Okay. But you know there's a number in dispute --

15 A Yes.

16 Q -- that you owe the musicians?

17 A Yes.

18 Q All right. Will you be able to pay that amount?

19 A No. No.

20 Q Unless you're put back into the POPS?

21 A No.

22 Q Would reinstatement in the POPS facilitate or enable the
23 POPS to pay the musicians what's owed and life goes on?

24 A I would hope so.

25 Q So to recap, sir, is it correct that you have lost goodwill

1 with your musicians, with your corporate sponsors, and with your
2 ticket holders or patrons?

3 MR. REED: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. DESTEFANO:

6 Q Knowing what you know about the financial condition of the
7 POPS, and knowing what you know about the dealings with ticket
8 holders, musicians, and patrons, customers -- grants, do you
9 believe you have a prospect of regaining that goodwill with all
10 three entities if you were put back into the Verizon Hall to
11 perform concerts during at least the '23/'24 season?

12 MR. REED: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. DESTEFANO:

15 Q Do you believe there is any prospect of recouping the lost
16 goodwill without being able to perform concerts?

17 MR. REED: Objection, Your Honor.

18 THE COURT: Overruled as to that one.

19 THE WITNESS: Based on my relationship with many of our
20 corporate donors, our other individual donors, and my
21 understanding of where we are with patrons, I don't -- I don't
22 see how. No.

23 BY MR. DESTEFANO:

24 Q With musicians, you mean?

25 A Musicians or any -- any of those. Any of those groups.

1 Q Do you know whether the Kimmel Center and/or POKC are
2 non-profit corporations?

3 A They are.

4 Q And are they qualified charitable under 501(c)(3)?

5 A As far as I'm aware, yes.

6 Q And is the POPS likewise?

7 A Yes.

8 Q Does the POPS have any other source of revenue other than
9 charitable contributions, corporate sponsorships, and ticket
10 sales?

11 A No. Nothing material.

12 Q Can you tell us your belief as to why the Kimmel Center at
13 Verizon Hall is the only spot or venue to play symphony orchestra
14 concerts?

15 MR. REED: Objection, Your Honor. Misstates the
16 testimony and is leading.

17 MR. DESTEFANO: It doesn't misstate the testimony. And
18 can you tell us is not leading.

19 THE COURT: Mr. DeStefano?

20 MR. DESTEFANO: Yes?

21 THE COURT: Rephrase it.

22 MR. DESTEFANO: All right.

23 BY MR. DESTEFANO:

24 Q You testified earlier that there's no other suitable
25 available venue other than the Kimmel Center for the POPS to play

1 going forward after having been evicted.

2 THE COURT: Just so we're clear, I believe that Mr.
3 Meko's testimony was for a subscription, on a subscription basis.

4 MR. DESTEFANO: Right.

5 THE COURT: So let's be very clear here.

6 MR. DESTEFANO: I think he also said the Christmas
7 concerts, as well. But --

8 THE COURT: He specifically stated the Met was not an
9 option for the Christmas concerts. So let's be very specific as
10 to what his testimony was.

11 MR. DESTEFANO: Okay.

12 BY MR. DESTEFANO:

13 Q Well, let me ask you, then, yeah, is there anything other
14 than the Met or --

15 A Not to my knowledge. For Christmas, no.

16 Q Yeah.

17 A No.

18 Q Yeah. Why is that so?

19 A Well I mean, the Kimmel Center was literally built for these
20 concerts, for the Philadelphia Orchestra. Verizon Hall was built
21 for the Philadelphia Orchestra, the Philly POPS. That's why it's
22 built. And it's a great venue for that. There's nothing else
23 like that in the Philadelphia region. That's why it exists.

24 Q Do you know of anybody, any venue that has the proximity of
25 restaurants and/or parking close by?

1 A No.

2 Q How about the Met?

3 A No. It's nothing like that.

4 Q In your development efforts, is the proximity of indoor
5 parking and restaurants an important factor in selling tickets
6 and --

7 A Yes. Yes.

8 Q And why is that?

9 A Well, our corporate sponsors want to be in Center City.
10 They want to -- you know, the way that it's structure, there's
11 entertainment for customers involved in that. And so it's all
12 kind of one package. And that package doesn't exist anywhere
13 else.

14 Q You testified that you've lost goodwill with various
15 constituencies as a result of being -- not being able to play at
16 Verizon Hall. Is there any way that you can put a dollar sign on
17 the injury that results in either of those constituencies, the
18 loss of that goodwill?

19 A I don't know how to put a dollar sign on that kind of
20 goodwill, no.

21 Q Would you say that the loss of goodwill is substantial?

22 A Yes.

23 Q Knowing what you know and being familiar as you are with the
24 financial condition of the POPS at present, without being
25 reinstated, would the POPS be forced to shut down?

1 A I think as the Philadelphia POPS Orchestra, I don't think
2 there's any way forward without getting back in Kimmel.

3 MR. DESTEFANO: That's all I have on direct, Your
4 Honor.

5 THE COURT: Thank you. Mr. Reed.

6 MR. REED: Your Honor, may I approach the witness?

7 THE COURT: Please.

8 CROSS-EXAMINATION

9 BY MR. REED:

10 Q Good afternoon, Mr. Meko.

11 A Good afternoon.

12 Q I've handed you a binder of documents that I might refer you
13 to, but we'll decide as we go along. So I appreciate your time
14 and your testimony today. So Mr. Meko, you're a volunteer at the
15 POPS?

16 A I am.

17 Q Have you ever been an hourly employee?

18 A No.

19 Q Roughly how many hours a day do you spend on POPS business?

20 A I mean, over the years, it's probably a couple of hours a
21 week.

22 Q A couple hours a week?

23 A Yeah.

24 Q And does that vary?

25 A It does, yes.

1 Q Are there any days where you've spent two hours working on
2 POPS business?

3 A Sure. We've had meetings that are two hours. So yes.

4 Q But typically, it's two hours a week or less?

5 A Yeah. Two, three, four, maybe. Sometimes it could be more,
6 depending. But yeah.

7 Q And how long have you had the current role with POPS?

8 A I've been the finance chair for -- since July 1 and
9 treasurer for a year and a little bit more. I've been on the
10 finance committee for many years.

11 Q The finance chair of July 1 of this year?

12 A Correct.

13 Q Are you a member of the staff of the POPS?

14 A No.

15 Q You're a board member?

16 A Correct.

17 Q Volunteer board member?

18 A Correct.

19 Q But you have some understanding of the financial condition
20 of the POPS?

21 A Yes.

22 Q Does the POPS have financial statements?

23 A Yes.

24 Q When was the last time those were prepared?

25 A We just had our audit recently, last couple of weeks. And

1 it's not quite reported yet. I don't believe it's finalized.

2 Q So you don't yet have audited financial statements?

3 A No, but I think they're expected very soon.

4 Q Okay. When was the last time you had --

5 THE COURT: Hold on. I'm sorry. Ma'am? I have an
6 active witness on my stand. You are not to telegraph answers to
7 him at any point.

8 UNIDENTIFIED SPEAKER: Understood.

9 THE COURT: If I see it again, I'll ask you to leave my
10 courtroom.

11 UNIDENTIFIED SPEAKER: Understood.

12 THE COURT: Thank you. Mr. Reed.

13 MR. REED: Thank you, Your Honor. That's not what I
14 expect in this court. Thank you.

15 BY MR. REED:

16 Q When was the last time you had audited financial statements?

17 A Year ended July 1, 2022. So they would have been reported,
18 you know, a year ago, nine months ago, something like that.

19 Q Who's your outside -- this is an independent audit --
20 accounting firm?

21 A It is. Zalinski and Marty and his crew. Forgive me, I
22 can't remember the name of it.

23 Q Yeah. Do you have a going concern opinion from your
24 accounting firm?

25 A I believe so, yes.

1 Q And what exactly is that?

2 A It questions the viability of it as a going concern.

3 Q And last year, the last time you received audited financial
4 statements, what was the conclusion?

5 A I believe it was there.

6 Q Do you know whether you'll receive that this time around?

7 A I do not.

8 Q Do you have cash on hand?

9 A Not much.

10 Q Do you have other non-cash assets?

11 A Not much.

12 Q Expand a little bit on that. What are your non-cash assets?

13 A Some intellectual property that, you know, I don't
14 know -- well, they're not cash. Some -- some equipment,
15 instruments, that kind of thing. You know, not much else.

16 Q Do you record goodwill on your books?

17 A We do not.

18 Q You do not?

19 A No.

20 Q You're not a CPA, are you?

21 A I am not.

22 Q You have a finance degree from undergrad?

23 A I do.

24 Q When did you graduate? 1990?

25 A Correct.

1 Q Would you consider yourself to be a finance professional?

2 A No.

3 Q Have you ever charged for your time as a finance
4 professional?

5 A I have not.

6 Q Have you ever prepared anybody else's financial statements?

7 A Friends and family taxes.

8 Q We all have that burden. Have you ever charged anybody to
9 prepare them?

10 A No, never.

11 Q Okay. Forgive me, how long again -- how long have you been
12 associated with the POPS?

13 A Twelve years or so.

14 Q So you're aware that the POPS had a license agreement with
15 the Kimmel Center, correct?

16 A Yes.

17 Q And that was entered into in 2018, correct?

18 MR. DESTEFANO: Objection.

19 THE COURT: Basis?

20 MR. DESTEFANO: Not relevant to irreparable harm.

21 MR. REED: Your Honor, this is directly relevant. So
22 when we talked about this from the outset, what they're asking
23 for is a mandatory injunction. The fact that POPS has no
24 contractual right to use the facility is clearly relevant.
25 They're asking you to impose upon my clients a contract that has

1 expired.

2 THE COURT: Thank you. Overruled.

3 BY MR. REED:

4 Q So we got to my next question. Are you aware that that
5 agreement has expired?

6 A I am.

7 Q And it expired on June 30th of this year, correct?

8 A Correct.

9 Q Were you aware before June 30th that that agreement was
10 going to expire?

11 A I don't recall.

12 Q Was that discussed at the board meeting, any board meeting?

13 A I don't recall.

14 Q Do you recall any discussion with any staff member of the
15 POPS?

16 A Not with regard to that specific -- you know, the -- the
17 expiration of it, no.

18 Q But it's fair to say that to the extent the POPS wanted to
19 use Verizon Hall after the expiration of that agreement, you
20 would need to negotiate a new agreement, correct?

21 A Sounds correct.

22 Q You agree that the POPS should pay to use Verizon Hall,
23 right?

24 A Yes.

25 Q You should pay the rent, correct?

1 A Yes.

2 Q If you use services, you should pay for those services?

3 A Yes.

4 Q If you require lighting, for example, that you would pay for
5 the lighting?

6 A Yes.

7 Q For the sound equipment?

8 A Yes.

9 Q For the ushers?

10 A Yes.

11 Q The ticket takers?

12 A Yes.

13 Q Cleaning staff?

14 THE DEPUTY: Your Honor?

15 THE COURT: Yes? I apologize.

16 I apologize, Mr. Reed. My deputy was making me aware
17 that we're having an issue with lag with regards to our recording
18 system. We want to make sure our record is tight.

19 MR. REED: Of course.

20 THE COURT: So we're going to take a brief recess until
21 our deputy lets us know that we're up and running correctly so
22 that we have a solid record. I'm going to give us at least 15
23 minutes. Everybody, counsel, take a comfort break.

24 MR. REED: Thank you, Your Honor.

25 THE COURT: Thank you. My apologies.

1 (Recess taken from 12:06 p.m. to 12:30 p.m.)

2 THE COURT: Please have a seat and speak up. Mr. Reed,
3 the floor is yours.

4 MR. REED: Thank you, Your Honor.

5 BY MR. REED:

6 Q Mr. Meko, you understand you're still under oath, correct?

7 A I do.

8 Q Did you have any discussions with counsel during the break?

9 A Nothing of significance, no.

10 Q Did you talk about the substance of this case or your
11 testimony with your counsel during the break?

12 A No.

13 Q So before the break, we were talking about the obligation to
14 pay for rent and other services, correct?

15 A Correct.

16 Q I also had mentioned the 2018 license agreement. If you
17 would, please, open your binder and turn to Tab 2.

18 A Tab? I'm sorry.

19 Q 2.

20 A Okay.

21 Q And I'll represent to you that that's the amended and
22 restated resident agreement -- license -- excuse me. I'll start
23 over and go slower. The Amended and Restated Resident Company
24 License Agreement, dated 14th of August 2018. Do you see that?

25 A I do.

1 Q Do you have any reason to believe this is not a true and
2 correct copy of that agreement?

3 A I have no reason to believe it's not.

4 MR. REED: Your Honor, may I offer that into evidence,
5 please?

6 THE COURT: Objections?

7 MR. DESTEFANO: Have you seen it before?

8 THE COURT: Do you have an objection?

9 MR. DESTEFANO: I mean, I think more foundation has to
10 be laid.

11 THE COURT: Mr. DeStefano, I know, sir, that you've
12 been in courtrooms throughout your entire career. You know the
13 proper form in which to object.

14 MR. DESTEFANO: I object.

15 THE COURT: Thank you. Sustained. Please lay a little
16 more foundation.

17 BY MR. REED:

18 Q Have you seen this document before?

19 A No.

20 Q Are you aware that there is an agreement between POPS and
21 the Defendants in this case?

22 A Yes.

23 Q Turn if you will please to Schedule 2 of that document.

24 MR. DESTEFANO: I object, Your Honor.

25 THE COURT: Sustained.

1 MR. REED: Your Honor, they're really going to object
2 to using this document? It's a document that's in the record.
3 It's attached to our papers. We can call Ms. Corbin and have her
4 verify it, authenticate it. It seems like a waste of time.

5 THE COURT: Again, Mr. Reed and Mr. DeStefano, I allow
6 you both to run your cases as you see fit. As a former trial
7 lawyer myself, I used to prefer venues that allowed that to
8 happen. So if Mr. DeStefano is choosing to object and I'm
9 sustaining it, then you're more than welcome to call Ms. Corbin
10 if need be.

11 MR. REED: We will, Your Honor. Thank you.

12 BY MR. REED:

13 Q In any event, you understand that there was an agreement
14 between the POPS and the Kimmel Center to pay for rent and
15 services?

16 A Yes.

17 Q And you're aware that that agreement expired June 30th.
18 You've already testified to that effect, right?

19 A Yes.

20 Q And so you understood, then, that in order for the POPS to
21 continue to use the Kimmel Center in the future, you would need
22 to negotiate a new agreement?

23 A As we had for many years.

24 Q And you would expect to negotiate the amount of rent that
25 you would pay, correct?

1 A Yes.

2 Q And you would expect to negotiate the services for which you
3 would be required to pay, correct?

4 A Yes.

5 Q And that would be a negotiation, wouldn't it?

6 A Yes.

7 Q What would the POPS have done if you were unable to
8 negotiate acceptable terms from the POPS' perspective?

9 MR. DESTEFANO: Objection.

10 THE COURT: If he's aware.

11 A I don't know.

12 BY MR. REED:

13 Q So you're a member of the Board?

14 A I am.

15 Q You're the treasurer?

16 A I am.

17 Q You have no idea what your organization would do if it's
18 unable to negotiate acceptable terms for using this venue that
19 you say is essential to your business?

20 A We -- we'd go out of business, I suppose.

21 Q Or you might look for another facility, right? Right?

22 A No, I know of no facility we could look at.

23 Q So you would just give up -- you wouldn't look to see if you
24 could play somewhere else?

25 A We've done that. We've looked around.

1 Q You have, haven't you?

2 A Yeah.

3 Q Okay. Let's turn to Tab 8 in your book, please. Do you see
4 that?

5 A Yep.

6 Q That's a press release from the POPS, May 6th, 2019. Have
7 you seen that before?

8 A I have.

9 Q Okay. And you see the Philly POPS, the headline there says,
10 Philly POPS was named the principal orchestra of the Met
11 Philadelphia, correct?

12 A Correct.

13 Q You were, in fact, the principal orchestra of the Met
14 Philadelphia, correct?

15 A Correct.

16 Q Do you continue to be the principal orchestra of the Met
17 Philadelphia?

18 A As far as I know.

19 Q So you have the ability to perform at the Met Philadelphia,
20 correct?

21 A Correct.

22 Q Do you sell tickets for those performances?

23 A I believe that, that -- they're typically sold -- often sold
24 through another party -- Ticketmaster, if I'm not mistaken.

25 Q Right, and the POPS receives the receipts for those sales

1 less the service charge that --

2 A Something like that. I'm not familiar with the details.

3 Q They're not free concerts, correct?

4 A They are not.

5 Q You hope to derive some revenue from those concerts,
6 correct?

7 A Yes.

8 Q You have, in the past, derived revenue from those concerts,
9 correct?

10 A Yes.

11 Q Turn, if you would please, to Tab 16 in your book.

12 MR. REED: Actually, Your Honor, if I may, I'll offer
13 the document at Tab 8 into evidence.

14 MR. DESTEFANO: Objection.

15 MR. REED: Your Honor, it's their press release. He
16 said he's seen it. He authenticated it.

17 THE COURT: Overruled.

18 (Defendant's Exhibit 8 admitted into evidence)

19 A Will you repeat the question?

20 BY MR. REED:

21 Q I just asked you to turn to Tab 16 in the book. Do you have
22 that in front of you?

23 A I do.

24 Q Do you see that's a press release dated February 1, 2023; do
25 you see that?

1 A Yep.

2 Q Have you seen that document before?

3 A Yes.

4 Q Do you believe that's a true and correct copy of the press
5 release that the POPS issued on or about February 1st of this
6 year?

7 A I have no reason to believe it's not.

8 MR. REED: Your Honor, I'd offer that.

9 MR. DESTEFANO: Again, I have a relevancy objection.

10 THE COURT: Ms. (indiscernible), can I see the
11 (indiscernible)?

12 Mr. Reed? Overruled.

13 (Defendant's Exhibit 16 admitted into evidence)

14 BY MR. REED:

15 Q Mr. Meko, you see the title of this document of the press
16 release says, The Philly POPS Bringing "Get Up Stand Up: An
17 Encyclopedia of Soul" to the Met Philadelphia on February 18th;
18 do you see that?

19 A I do.

20 Q And the "Get Up Stand Up" concert was originally scheduled
21 to be performed in Verizon Hall, wasn't it?

22 A Correct.

23 Q And you -- following suspension by the Kimmel Center, you
24 proposed to hold that concert at the Met, correct?

25 A Correct.

1 Q And you proposed to honor tickets sold for the Verizon Hall
2 performance at the Met, correct?

3 A Correct.

4 Q As I understand it, your testimony was that that concert
5 didn't happen because you didn't sell more than say \$5,000 worth
6 of additional tickets, right?

7 A Correct.

8 Q That's on top of the tickets that you had already sold and
9 were going to honor at the Met Philadelphia, correct?

10 A We were going to try.

11 Q That was your plan, correct?

12 A Correct.

13 Q You talked a little bit about the concert, the Christmas
14 concert. The Christmas concerts last season were performed at
15 Verizon Hall, correct?

16 A Correct.

17 Q So when you talked about \$1.1 million in ticket sales for
18 shows that had not yet been performed, you weren't referring to
19 the Christmas shows?

20 A I was not.

21 Q Thos had been performed?

22 A Correct.

23 Q So it's the 1.1 million for shows other than Christmas
24 shows?

25 A Correct.

- 1 Q Shows that don't require a chorus, for example?
- 2 A I don't -- I don't know. I don't know. Some of them may.
- 3 I do not know.
- 4 Q You don't know?
- 5 A I don't.
- 6 Q Do you know the seating capacity at the Met?
- 7 A Three thousand or something like that.
- 8 Q Do you know the seating capacity at Verizon Hall?
- 9 A Less.
- 10 Q It's 2,500, thereabouts, right?
- 11 A Sounds right.
- 12 Q And that's about 3,200, correct?
- 13 A Sounds right.
- 14 Q Let's talk a little bit about the Met. Where is the Met?
- 15 A North Broad Street.
- 16 Q How far north?
- 17 A Above Girard.
- 18 Q Recently renovated?
- 19 A Yes.
- 20 Q Long history?
- 21 A Yes.
- 22 Q A good space to entertain sponsors?
- 23 A In some ways -- in some ways, no.
- 24 Q They have bars there?
- 25 A They do.

1 Q Food?

2 A Yeah.

3 Q History?

4 A Yeah.

5 Q When you talk with sponsors about sponsoring the POPS, do
6 you extol those virtues about the Met?

7 A We do, but they haven't been interested in the Met.

8 Q So but when you speak with sponsors, you talk about the many
9 benefits of performing at the Met, correct?

10 A To deaf ears, yes. Yes.

11 Q With respect, I'm asking you to answer my question, please.
12 You do talk about that, correct?

13 A Yes.

14 Q Let's turn, if you would please, to Tab 14 in your binder.
15 Do you see that?

16 A I do.

17 Q And that's a POPS press release dated January 4th of this
18 year, correct?

19 A Correct.

20 Q Have you seen this press release before?

21 A I have.

22 Q Is this a true and correct copy of that press release --

23 A As far --

24 Q -- to the best of your knowledge?

25 A As far as I know.

1 MR. REED: Your Honor, I'd offer it into evidence.

2 THE COURT: Hearing no objection, so moved.

3 (Defendant's Exhibit 14 admitted into evidence)

4 BY MR. REED:

5 Q Turn to the last page of that press release, if you would.

6 Do you see that? Are you at that page I should ask you.

7 A Yes.

8 Q Okay. Would you please read into the record the very last
9 sentence of that press release beginning, the Philly POPS?

10 A "The Philly POPS performance is a founding resident company
11 of the Kimmel Cultural Campus and is the principal orchestra of
12 the Met Philadelphia and at venues throughout the Mid-Atlantic
13 region."

14 Q Thank you. So we've already talked about Verizon Hall,
15 correct?

16 A Correct.

17 Q We've talked about the fact that you're the principal -- or
18 the POPS is the principal orchestra at the Met, correct?

19 A Correct.

20 Q Has been since 2019, correct?

21 A Correct.

22 Q Has performed there, correct?

23 A Correct.

24 Q You also state that you perform at other venues throughout
25 the Mid-Atlantic region, correct?

1 A Correct.

2 Q This is a fair statement?

3 A It is.

4 Q It's an accurate statement?

5 A It is.

6 Q It remains true today?

7 A It does.

8 Q Could you name some of those venues, please?

9 A Mann Music Center, North Penn High School. Forgive me --

10 I'm blank.

11 Q Have you played at the Irvine Auditorium at Penn? When I

12 say you, I'm --

13 A Yeah.

14 Q -- referring to the POPS. Forgive me.

15 A I don't know.

16 Q How about the Annenberg Center at Penn?

17 A Yes, but not with the full orchestra.

18 Q The McCarter Theater at Princeton?

19 A Not -- not to my knowledge. I don't know.

20 Q How about Mullen Center out of Philadelphia? You guys --

21 does the POPS perform there?

22 A No.

23 Q Are you capable of performing there?

24 A Not with any financial success.

25 Q Okay. Are you familiar with the Roselle Center at

1 University of Delaware?

2 A No.

3 Q Have you looked to see if the POPS could perform there?

4 A I have not, personally.

5 Q Okay. To your knowledge, has anybody at the POPS looked?

6 A Not to my knowledge.

7 Q To your knowledge, has anybody at the POPS looked to see if
8 you could perform at the Irvine Auditorium?

9 A Not to my knowledge.

10 Q To your knowledge, has anybody at the POPS looked to see if
11 you could perform at the Annenberg Center?

12 A Not for the Philadelphia -- not for the orchestra. It's
13 just -- it's not near big enough.

14 Q How do you know?

15 A It's a couple 100 seats at the --

16 Q Okay.

17 A -- Annenberg Center.

18 Q Do you know the capacity of the McCarter Theater up at
19 Princeton?

20 A I don't.

21 Q Have you looked -- to your knowledge, has anybody --

22 A Not --

23 Q -- at POPS looked?

24 A -- not to my knowledge. I wouldn't be the one to be looking
25 in those to that degree.

1 Q So there's others who would know better than you what --

2 A Yes.

3 Q -- whether the POPS could perform at a particular venue?

4 A Yes.

5 Q Are you familiar with the Dell in Philadelphia?

6 A Sure.

7 Q Have you looked into that as a potential venue for the POPS?

8 A No.

9 Q You mentioned the -- the POPS has performed at the Mann
10 Center, correct?

11 A Correct.

12 Q Famously, the POPS performs outside of Independence Hall,
13 correct?

14 A Correct.

15 Q Down in the Delaware River waterfront; do you perform there?

16 A Not to my knowledge.

17 Q Okay.

18 A I don't know.

19 Q Are you familiar with Longwood Gardens?

20 A Yes.

21 Q Has the POPS ever performed there?

22 A Many years ago.

23 Q And have you looked into the possibility of performing there
24 again?

25 A I don't know.

1 Q Who would know?

2 A I'm sure Karen Corbin would know.

3 Q Okay, anybody else?

4 A No one that's currently on staff because there's no staff
5 left to know.

6 Q So let's go back to Tab 14 if you would, please. Go to the
7 first page of that January 4 press release. Are you on that
8 page?

9 A I am.

10 Q So there's a sentence midway through the second paragraph.
11 I'll read it. It says, quote, we must raise \$2 million by the
12 end of our season in July to cover our obligations and secure our
13 future as a Philadelphia Institution, period, close quote. Have
14 I read that correctly?

15 A Yes.

16 Q Do you see that reference to obligations?

17 A Yes.

18 Q What are those obligations?

19 A To our ticket holders, to other debts that we have, to the
20 orchestra.

21 Q So those debts include debts to the Kimmel Center, correct?

22 A Yes.

23 Q They include debts to your musicians, correct?

24 A Yes.

25 Q They include debts to your ticket holders?

1 A Yes.

2 Q Have you raised \$2 million by the end of the season?

3 A No.

4 Q Okay. You agree that the POPS owes money to the Kimmel
5 Center -- we just disagree about the amount that's owed, correct?

6 A Yes.

7 Q So there were amounts that were required to be paid that
8 have not yet been paid, correct?

9 A Yes.

10 Q Turn to Tab 9 in your binder, please. Do you see that
11 document?

12 A I do.

13 Q Have you ever seen that document before?

14 A No.

15 Q As a board member of the POPS, would you expect to see a
16 notice of default from the Kimmel Center?

17 MR. DESTEFANO: Objection.

18 THE COURT: Overruled.

19 A I'm not sure.

20 BY MR. REED:

21 Q Well, let me rephrase. If the Kimmel Center, which is where
22 you've described it's essential for the POPS to perform, sends a
23 notice of default to the POPS saying that you've defaulted under
24 your agreement, would you expect, as a board member, to know
25 about it?

1 A It's reasonable, yes.

2 Q You would expect, right?

3 A Yes.

4 Q But yet you haven't seen this document?

5 A No.

6 Q Okay. We'll turn to another one -- Tab 11. It's a document
7 dated July 20 -- excuse me, July 1, 2020. Have you seen that
8 document?

9 A No.

10 Q We can all read what it says. It's a notice of default.
11 I'm not going to ask you to testify without the substance, but
12 would your testimony be the same on July 1, 2020? If the POPS
13 received a notice of default from the Kimmel Center, would you,
14 as a board member and in your various capacities on behalf of the
15 POPS, expect to know about it?

16 MR. DESTEFANO: Object because I don't see how this
17 goes to irreparable harm issue. And again, I was under the
18 understanding that that's what was -- the scope of this hearing
19 was.

20 THE COURT: Mr. Reed, I'm assuming you're going to link
21 this?

22 MR. REED: Oh, I am, Your Honor, yes.

23 THE COURT: Overruled. I'll give you some leeway.

24 MR. REED: Thank you, Your Honor.

25 /////

1 BY MR. REED:

2 Q Let's turn to Tab 15, please.

3 THE COURT: Hold on. I don't have any answer for my
4 record.

5 MR. REED: Oh, I apologize.

6 THE COURT: It's okay.

7 MR. REED: So Your Honor, so --

8 THE COURT: No, not from you -- from the witness. You
9 asked a question -- there was an objection and there was no
10 answer.

11 MR. REED: I'm sorry. I was ready to testify.

12 THE WITNESS: I don't recall knowing about this. I
13 don't -- I'm sure I've never seen it.

14 BY MR. REED:

15 Q And I think my question to you was would you expect to see a
16 document like this.

17 A Yes.

18 Q Turn to Tab 15 in your binder, please. Do you see that
19 document?

20 A I do.

21 Q Okay. And this is a letter -- I'll describe it to you.
22 Frank Giordano. Do you know who Frank Giordano is?

23 A I do.

24 Q And what was his role at the POPS on January 17, 2023?

25 A His role had changed. I believe he was still president if

1 I'm not mistaken.

2 Q Have you seen this document before?

3 A No.

4 Q You were a board member at the time, correct?

5 A Yes.

6 Q On the finance committee?

7 A Yes.

8 Q And as a member of the finance committee, was one of the
9 things that you were concerned about whether the POPS was paying
10 its bills?

11 A Yes.

12 Q But you didn't see a letter from the orchestra suspending
13 the POPS status --

14 A No, I didn't see it --

15 Q -- at the Kimmel Center?

16 A -- but I was aware of it.

17 Q Okay. All right, so you were aware of it?

18 A Yes.

19 Q When did you first become aware of it?

20 A I don't recall.

21 Q Who told you about it?

22 A I don't recall.

23 MR. DESTEFANO: Your Honor --

24 BY MR. REED:

25 Q What did they tell you about it?

1 MR. REED: -- I have to object, Your Honor, because it,
2 again, we're not straying from relevance of this hearing.

3 THE COURT: I'm --

4 MR. REED: I'll move on, Your Honor.

5 THE COURT: I need you to get there for me, Mr. Reed,
6 sustained.

7 MR. REED: Thank you, Your Honor. I'll move on.

8 BY MR. REED:

9 Q Turn, if you will, to Tab 12. Do you have that document in
10 front of you?

11 A I do.

12 Q Have you seen this document before?

13 A I don't recall seeing it before.

14 Q Are you aware that in March, in or about March 2021, the
15 POPS entered into an amendment to its license agreement to use
16 the Kimmel Center?

17 A I don't recall.

18 Q Did anybody tell you with form or substance that the Kimmel
19 Center had taken a position that time was of the essence for
20 compliance with the contractual obligations by POPS?

21 A I -- I don't recall.

22 Q Did anybody in form or substance tell you as a member of the
23 board of the POPS that if you defaulted on your agreement --
24 excuse me, the POPS defaulted on its agreement, that it would no
25 longer have the right to use the Kimmel Center?

1 A I -- I don't recall.

2 Q Did you believe in 2021 that the POPS had an obligation to
3 pay for the use of the Kimmel Center in advance of that use?

4 A In advance of the use? I -- I don't know. I -- I don't
5 know.

6 Q You don't know one way or the other --

7 A Yeah, I don't know one way or the other.

8 Q -- whether the POPS is required to pay for rent before it
9 used the facility?

10 A Correct.

11 Q Do you know whether the POPS actually did pay in advance for
12 the use of the facility for say the Christmas concerts last
13 season?

14 A We did not.

15 Q Do you know whether the POPS has paid anything towards the
16 use of Verizon's -- I'll withdraw the question. It's a bad
17 question.

18 Has POPS paid for the rent for the time it used Verizon Hall
19 for last season's Christmas series?

20 A Not to my knowledge.

21 Q Has the POPS paid for the services that it was provided in
22 connection with those concerts?

23 A Not to my knowledge.

24 Q The ushers haven't been paid by the POPS?

25 A No.

1 Q Security hasn't been paid by the POPS?

2 A No.

3 Q The people who clean up after you were never paid?

4 A No.

5 Q Wardrobe?

6 A No.

7 Q Maybe most importantly, your musicians -- have they been
8 paid?

9 A I believe they have.

10 Q Your musicians have been paid for those concerts?

11 A Yes.

12 Q So the musicians have been paid all that they're owed?

13 A For the Christmas concerts, I believe so -- I'm not certain.

14 Q Okay. You're not certain?

15 A I'm not certain.

16 Q Okay. Turn if you would, please, to Tab 13 of your binder.
17 Do you have that document in front of you?

18 A I do.

19 Q Is this a document you've seen before?

20 A No.

21 Q There's a cover email and then there's an invoice attached.
22 If you turn to the second page of that document, have you seen
23 this invoice?

24 A No.

25 Q So it's your testimony, as treasurer of the POPS, that

1 you've not seen that invoice that was sent for your Christmas
2 concert series last year; is that right?

3 A I believe that this is an attachment that was sent
4 yesterday, if I'm not mistaken, in regards to this. And I'm not
5 certain that this is the same -- so I was not treasurer at the
6 time or the chair of the finance committee at the time.

7 Q Okay. So if you look at the upper right corner of the
8 second page of the document that's in your book at Tab 13, do you
9 see there's a date there, 12/30/22?

10 A Yep.

11 Q Is it your understanding that this document was created
12 yesterday?

13 MR. DESTEFANO: Objection, Your Honor, objection.

14 THE WITNESS: No, you asked me if had seen it --

15 THE COURT: Hold on, hold on. One second.

16 THE WITNESS: Sorry.

17 THE COURT: Overruled.

18 BY MR. REED:

19 Q So I'm asking you a different question. I'm not arguing
20 with you -- I'm asking you a different question. Is it your
21 testimony that this was something created yesterday?

22 A No.

23 Q Okay, just wanted to be clear. Thank you. You are the
24 treasurer of the POPS now, correct?

25 A I am.

1 Q And you're on the finance committee --

2 A I am.

3 Q -- correct? And you were in December of 2022?

4 A Yes.

5 Q And you are working with the POPS to figure out whether you
6 can remain solvent, correct?

7 A Yes.

8 Q And part of that process requires you to understand the
9 POPS' liabilities, correct?

10 A Yes.

11 Q The money that it owes, correct?

12 A Yes.

13 Q Including the money that it owes to the Kimmel Center,
14 correct?

15 A Yes.

16 Q Have you looked at the bills at the Kimmel Center sent that
17 haven't been paid?

18 A I'm familiar with the amounts -- you asked me about the
19 specific document.

20 Q I did. I'm asking you now. Have you looked at the document
21 -- the bills that the Kimmel Center paid that have -- excuse me,
22 sent -- that have not yet been paid?

23 MR. REED: Objection as to relevance.

24 THE COURT: Overruled.

25 THE WITNESS: I've looked at some of them. I can't say

1 I've looked at all of them.

2 BY MR. REED:

3 Q And you don't know whether you looked at this one?

4 A Correct.

5 Q Do you know whether the rent charged by the Kimmel Center is
6 the rent that the parties agreed to in their license agreement?

7 MR. DESTEFANO: Objection.

8 THE COURT: Sustained.

9 MR. REED: Your Honor, may I address it?

10 THE COURT: Please.

11 MR. REED: I'll tie it together. I mean, so -- I mean,
12 for them, for the POPS to take the position that the injunction
13 is necessary for them to avoid irreparable harm, one of the
14 things they're going to have to convince you is that it's
15 sufficient to avoid irreparable harm.

16 Right now -- and again, they have a history of just
17 running up debt. They perform one concert to pay for the last.
18 At some point, it's got to catch up with them. So the fact that
19 there's millions of dollars, as we've heard admitted today,
20 millions of dollars in debt that they're hoping to satisfy by
21 incurring more debt at my client's expense, is directly relevant
22 to whether they can satisfy that element for their motion.

23 MR. DESTEFANO: No, it's not, Your Honor. It's success
24 on the merits, which is something -- a different element, and
25 it's not relevant to irreparable harm unless they're put back in.

1 I think we're going very far afield of what the scope of this
2 hearing was specifically nailed down as.

3 THE COURT: Okay. The objection's sustained.

4 MR. REED: Okay. I'll move on.

5 BY MR. REED:

6 Q Let's talk about the musicians, right. POPS can't perform a
7 concert unless it has people to play the music, correct?

8 A Correct.

9 Q You need your musicians to perform, correct?

10 A Correct.

11 Q Counsel for the POPS asked you about, I believe, money owed
12 to the musicians; do you recall that?

13 A Correct.

14 Q He may have also asked you about a lawsuit that was filed?

15 A Correct.

16 Q You're aware that a complaint was filed --

17 A Yes.

18 Q -- in federal court in this district, in this building?

19 A I'm aware it was filed.

20 Q And you realize that that was initiated by the filing of a
21 complaint; do you understand that?

22 A I do.

23 Q Have you seen a copy of that complaint?

24 A I don't believe I --

25 MR. DESTEFANO: Objection, Your Honor. Again, it does

1 not go to the issue that was designated for this hearing. And I
2 think the Court made it clear that she had enough, or it had
3 enough evidence that -- or at least enough to nail down a ruling
4 on that and only wanted to hear about irreparable harm. Those
5 were the ground rules, Judge. And I have to object to the extent
6 we're moving beyond those.

7 THE COURT: Thank you, Mr. DeStefano. Mr. Reed, do you
8 have a response?

9 MR. REED: Yeah. I don't mean to be flip, but hope is
10 not a plan. If they can order us to reserve 25 dates on our
11 calendar and then if they show up and don't have musicians to
12 perform, then they have not avoided the irreparable harm. The
13 injunction they're asking you to enter will not allow them to
14 avoid irreparable harm. So their ability to get musicians to
15 perform for them is directly relevant to the question before Your
16 Honor.

17 THE COURT: Thank you. Overruled.

18 BY MR. REED:

19 Q I think it was your testimony you don't know how much money
20 the POPS currently owes the musicians; is that correct?

21 A I believe it's under -- I believe it's under dispute,
22 actually.

23 Q Since there's a dispute, I'll respect it, but let me ask you
24 -- do you personally have an understanding of what that number
25 is?

1 A Sixty thousand dollars, something like that.

2 Q So you've calculated it?

3 A No, I've been told.

4 Q You've been told?

5 A Yeah.

6 Q That litigation's ongoing, correct?

7 A As far as I know.

8 Q Okay. Turn if you would, please, to Tab 18 in your binder.

9 Are you with me?

10 A Uh-huh.

11 Q Have you seen this document before?

12 A I have not seen the document, no.

13 Q Okay. Are you aware that the Musicians Union has placed the
14 POPS on its unfair list?

15 A I am.

16 Q Are you aware that the Musicians Union has instructed its
17 members that they may not perform for the POPS?

18 MR. DESTEFANO: Objection.

19 THE COURT: Basis? Mr. DeStefano, what's your basis?

20 MR. DESTEFANO: Again, relevance.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. REED:

24 Q The POPS remains on that unfair list?

25 A As far as I'm aware.

1 Q Nobody's told you that the musicians can play for the POPS?

2 A Nobody has told me that.

3 Q Do you have an understanding of if that issue will ever be
4 resolved?

5 A I don't.

6 Q Do you have any idea of when it might be resolved?

7 A I believe that if we can get back in play, it'll be
8 resolved.

9 Q That's your belief?

10 A Yes.

11 Q Has anybody told you that to be the case?

12 A No.

13 Q Have the musicians told you that if you get this order from
14 the court that they will come back and perform for the POPS?

15 A No.

16 Q Has the union told you that if you get this order that they
17 will remove the POPS from the unfair list?

18 A No.

19 Q But you haven't seen this document that's Tab 18, have you?

20 A No.

21 Q Okay. You said that the POPS received about \$1.1 million in
22 ticket money for concerts that have not yet been performed,
23 correct?

24 A Correct.

25 Q Where is that money?

1 A Spent on other things.

2 Q Who spent it?

3 A Philly POPS.

4 Q The POPS received that money?

5 A Yes.

6 Q And it spent it?

7 A Yes.

8 Q Didn't put it into escrow?

9 A No.

10 Q If the court were to enter an order requiring the Kimmel
11 Center to permit the POPS to perform again on Verizon Hall, would
12 the POPS expect to pay its outstanding obligations before that
13 happened?

14 A To the -- outstanding obligations to?

15 Q Well, I'll go through them each but remember, we looked at a
16 document that referred to -- that you needed to raise \$2 million
17 to --

18 A Uh-huh.

19 Q -- pay for your outstanding obligations.

20 A Right.

21 Q Do you recall that document?

22 A Yes.

23 Q So that's what I'm referring to now. I'll get more detail,
24 but the obligations that you referred to in your press release.
25 Do you expect to take care of those obligations before you take

1 the Verizon Hall stage again?

2 A I assume so.

3 Q How? What money are you going to use?

4 A We are actively pursuing significant funding right now so
5 that we can do that.

6 Q Do you have any firm commitments for that money?

7 A We do not.

8 Q So you don't know whether you'll be able to satisfy those
9 commitments or not?

10 A I do not know.

11 Q Do you expect the musicians to perform for the POPS without
12 being paid?

13 A No.

14 Q And if you were to take the Verizon Hall stage again, would
15 you expect to pay the Kimmel Center rent?

16 A Yes.

17 Q With what money?

18 A With the money we're going to raise from ticket sales.

19 Q Let's talk about ticket sales. So you have a 1.1 million
20 outstanding, right?

21 A Uh-huh.

22 Q Would you --

23 THE COURT: I'm sorry -- is that a yes?

24 THE WITNESS: Yes.

25 THE COURT: Thank you. I apologize.

1 THE WITNESS: No.

2 THE COURT: We need that for the record.

3 BY MR. REED:

4 Q Would you honor those tickets first?

5 A Yes.

6 Q Have you done any kind of analysis to determine how much
7 incremental --

8 A Yes.

9 Q -- ticket revenue you could generate?

10 A Yes.

11 Q And how much is that?

12 A I -- I don't have that number in front of me.

13 Q Do you have an estimate?

14 A No.

15 Q You don't know?

16 A Not as I sit here now.

17 Q We talked about the performance at the Met. You sold \$5,000
18 in tickets, right?

19 A Yeah.

20 Q Was that a surprise to you?

21 A Yes.

22 Q You were projecting more revenue than that, right?

23 A Yes.

24 Q By the way, has the inability to perform affected your
25 relationship with your patrons?

1 A Yes.

2 Q They want their money back, don't they -- many?

3 A Some.

4 Q Have you done any assessment of the likelihood that people
5 will buy new tickets for performance by the POPS, given the
6 history?

7 A Assessment?

8 Q Yeah. Do you know whether people will feel comfortable
9 giving you their money with the risk that you will spend it and
10 not perform?

11 A We don't -- I'm not aware of any study.

12 Q It's reasonable to think that might impact your ticket
13 sales, right?

14 A Yes.

15 Q Did you factor that into your calculation -- the one you
16 don't remember today?

17 A I'm sure we did.

18 Q You're the treasurer -- the finance committee, yes?

19 A Yes.

20 Q Did you see some --

21 A We have --

22 Q -- that type of analysis?

23 A -- we have projections and analysis on that, yes.

24 Q Okay. And again, so if you're going to use -- withdrawn.

25 Do you have a plan -- I'll withdraw that, too, sorry.

1 We talked a little bit about bankruptcy, right? Have you
2 made the decision to file for -- has the POPS made the decision
3 to file for bankruptcy?

4 A We've talked about it. We haven't made a decision.

5 Q Okay. Do you know what type of bankruptcy it would be?
6 Would it be dissolution or reorganization?

7 A We would hope reorganization?

8 Q But you haven't decided yet?

9 A Correct.

10 Q Have you had any discussions with the POPS' creditors about
11 the potential for bankruptcy?

12 A No.

13 Q The filing is not imminent, I assume?

14 A No.

15 Q How long have you been talking about bankruptcy at the POPS
16 Board?

17 A Months.

18 Q When was that?

19 A Maybe in the spring.

20 Q Can you be more specific?

21 A No.

22 THE COURT: And just so I'm clear, we're talking about
23 spring of 2023?

24 MR. REED: Yes, yes.

25 THE COURT: Thank you.

1 BY MR. REED:

2 Q So did you personally, as treasurer of the POPS Board,
3 recognize that bankruptcy might be necessary following suspension
4 from the Kimmel Center?

5 A Yes.

6 Q That was in January?

7 A Yes.

8 Q Did you personally consider the possibility that bankruptcy
9 might be necessary when the POPS was put on the unfair list by
10 its union and its musicians were forbidden from playing for the
11 POPS?

12 A Did I personally think about that --

13 Q Yes.

14 A -- at that time? Yes.

15 Q Any discussions at the Board level?

16 A No. I mean, not specific to that issue.

17 Q You're aware that my clients filed counterclaims in this
18 lawsuit?

19 A Yes.

20 Q Are you aware that -- have you -- have you seen that
21 document?

22 A I have not.

23 Q Are you aware that the POPS filed an answer to those
24 counterclaims?

25 MR. DESTEFANO: Objection.

1 MR. REED: Your Honor, very limited.

2 MR. DESTEFANO: Again --

3 MR. REED: I --

4 MR. DESTEFANO: -- it's way beyond the scope of --

5 MR. REED: -- I'm not going to ask substance.

6 THE COURT: Gentlemen?

7 Mr. DeStefano?

8 MR. DESTEFANO: Way beyond the scope of what this
9 hearing is supposed to be for.

10 THE COURT: Thank you, sir. We are using a recording.
11 So if you're both speaking at the same time, neither of you have
12 anything preserved on this record.

13 Mr. Reed?

14 MR. REED: Yeah, that was my fault. I apologize, Your
15 Honor. It's very -- if he's seen it, I want him to get
16 authenticated. I'm not going to get into the substance.

17 THE COURT: Well, in that case, sustained.

18 MR. REED: Okay. May I ask if he's seen it?

19 THE COURT: You may ask if he's seen it.

20 BY MR. REED:

21 Q Have you seen the answer that the POPS filed -- the answer
22 to the counterclaims asserted against the POPS in this
23 litigation?

24 A Yes.

25 MR. REED: To follow up, process only?

1 MR. DESTEFANO: No.

2 Your Honor --

3 MR. REED: Your Honor, I'm asking you, not Mr.

4 DeStefano, excuse me.

5 THE COURT: Thank you. I assume you have an objection,
6 though, Mr. DeStefano?

7 MR. DESTEFANO: Yes.

8 THE COURT: Sustained.

9 MR. REED: All right. One second -- I might be done.

10 THE COURT: Yes.

11 MR. REED: No further question at this time. Thank
12 you.

13 THE COURT: Thank you. Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. DESTEFANO:

16 Q Is it true, sir, that you're waiting for the outcome of this
17 motion to pull the trigger on a bankruptcy or decide to pull the
18 trigger on a voluntary bankruptcy?

19 MR. REED: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. DESTEFANO:

22 Q Well, let me ask you this. What are you waiting for before
23 making a decision or final decision on bankruptcy?

24 A Whether we can get back in the Kimmel Center or not.

25 Q And you're aware that you may not have a decision because

1 one of your creditors or more would be able to put you into
2 bankruptcy?

3 MR. REED: Objection, Your Honor. Leading.

4 THE COURT: Sustained.

5 MR. DESTEFANO: Okay.

6 BY MR. DESTEFANO:

7 Q Are you aware that there's such a thing as involuntary
8 bankruptcy engendered or --

9 A Yes, yes.

10 Q -- provoked by --

11 A Yes.

12 Q Let me go back to the licensing agreement that expired in
13 June of this year. Was that the first licensing agreement that
14 expired between the parties going back to 2021?

15 A Going back to 2021?

16 Q Yes. I'm sorry -- 2001 when you first started playing at
17 the Verizon Hall.

18 A There have been many different licensing agreements over the
19 years.

20 Q And have they always been renewed?

21 A Yes.

22 Q Up until this latest one that happened in June after you had
23 been evicted?

24 A Yes.

25 Q Okay. So it was a course of conduct between the Kimmel

1 Center and --

2 THE COURT: Sustained.

3 MR. DESTEFANO: Okay.

4 BY MR. DESTEFANO:

5 Q What was the typical length, to the best of your knowledge,
6 of the licensing agreements, the prior licensing agreement?

7 A I -- I don't know. I -- I'm going to guess several years,
8 to the best of my knowledge.

9 Q Okay. But up until the latest one, they had always been
10 renewed --

11 A To my knowledge.

12 Q -- by the parties?

13 A Yes.

14 Q All right. Now, I think your testimony on cross-examination
15 was that the POPS aspired and even scheduled a concert at the
16 Met. Was that one or more concerts at the Met?

17 A Well, the February concert, the subscription concert, was
18 one.

19 Q Okay, all right. And that couldn't come to pass?

20 A It did not.

21 Q And would you state the reasons that couldn't come to pass?

22 A Our subscribers, our patrons, were not going to go there,
23 and they told us that through emails and phone calls, for the
24 fact that we couldn't sell any more tickets. Our own subscribers
25 were not going to go there, even though they already had a

1 ticket. They were not going to show up, and we knew that, based
2 on their reaction.

3 Q Was there an availability of the preferred -- the dates you
4 had historically played -- Friday, Saturday, Sunday?

5 A Typically, the best date for us traditionally has been
6 Sunday and that is not available on Sunday. So not all the dates
7 are available.

8 Q Now, I think Mr. Reed has mentioned that you had actually
9 performed at the Met, POPS had actually performed at the Met in
10 years gone by?

11 A Uh-huh.

12 Q All right.

13 THE COURT: Sorry -- is that a yes, sir?

14 THE WITNESS: Yes, sorry.

15 BY MR. DESTEFANO:

16 Q Were those one-off concerts?

17 MR. REED: Objection, Your Honor. One-off
18 concerts -- he's testifying.

19 MR. DESTEFANO: Or a series.

20 THE COURT: The witness has actually used the term one-
21 off multiple times.

22 MR. DESTEFANO: Right.

23 THE COURT: Overruled.

24 BY MR. DESTEFANO:

25 Q Were those one-off concerts?

1 A Yes. Yeah, so we'd play one concert, not a subscription
2 concert, often in conjunction with some other organization.

3 Q When you say often in conjunction with some --

4 A Like Disney.

5 Q -- other organization --

6 A Like Disney or some other organization that would present.
7 We would perform, but it's their production.

8 Q Okay. So you backed up another person's --

9 A Essentially, yes.

10 Q -- production in a one-off conference --

11 A Often times.

12 Q -- at the Met?

13 A Yes.

14 Q Okay, all right. Are you able to perform a series --

15 A No.

16 Q -- or a Christmas concerts at the Met?

17 A Not with any success, no.

18 Q Now, Mr. Reed mentioned a whole bunch of other places, and I
19 took notes. So are these other places mentioned by Mr. Reed
20 times when the POPS have performed what has been referred to as a
21 one-off conference?

22 A Yes. In the cases of those that we did perform at, yes.

23 Q Okay. And in the Mann, did they have anywhere near the
24 seating capacity of Verizon Hall?

25 A The ones that I'm aware of that Mr. Reed listed do not, and

1 many of them are not even close. If we could find another place,
2 we would consider it. I'm not aware of one.

3 Q Were some of these free concerts?

4 A Many of them, yes.

5 Q Many of the other venues were free concerts --

6 A Yes.

7 Q -- they weren't ticketed?

8 A Correct.

9 Q And as far as the Mann and the Dell, those were outdoor --
10 were those outdoor summer concerts?

11 A We've never, to my knowledge, performed at the Dell. We
12 have performed at the Mann outdoor free summer concerts.

13 Q Okay. Now, the concert season recognized by both the
14 orchestra and the POPS is when? When's it start -- when does it
15 end?

16 A September through May --

17 Q Okay.

18 A -- typically.

19 Q That's primary not good weather days?

20 A Generally.

21 Q The series of both orchestras all take place within that
22 span of time indoors?

23 A Correct.

24 Q Can you perform outdoors during that concert season? Or is
25 it feasible to perform outdoors --

1 A I mean --

2 Q -- at places like the Mann or whatever?

3 A I guess in September and May it is -- certainly not in
4 December and January.

5 Q Or November?

6 A Right.

7 Q March, April?

8 A Correct.

9 Q And to the extent, the concert at the Delaware River or
10 concert at Independence Hall, were those free concerts?

11 A Free concerts, yes.

12 Q So these outdoor concerts that were performed in good
13 weather days, 4th of July or whatever, were free concerts?

14 A Non-ticketed, free concerts.

15 Q Okay. Can the POPS survive as an orchestra by only
16 performing free concerts or outdoor concerts, or concerts at
17 venues with a couple hundred seats or maybe even a thousand
18 seats?

19 A No.

20 Q And do you get corporate sponsorships for those free
21 concerts?

22 A Some of them we do.

23 Q But for the ticketed concerts --

24 A Yes. For the ticketed concerts, we do.

25 Q So the Annenberg Center -- would that be suitable --

1 A No.

2 Q -- for a concert series that's performed during the concert

3 --

4 A No.

5 Q -- season?

6 A No, too small.

7 Q I can't read my own writing. Villanova University?

8 A Too small, a couple hundred seats.

9 Q Princeton -- that Princeton venue -- was it Princeton
10 University?

11 A Yeah, I'm not familiar with the venue. I don't know if we'd
12 do a subscriber series at Princeton. It doesn't make sense to
13 me.

14 Q Why doesn't it make sense to you?

15 A We're the Philly POPS. To my knowledge, we've never done a
16 subscription series outside of Philadelphia.

17 Q And your sponsors are all -- are your sponsors all
18 Philadelphia centric organizations?

19 A Uh-huh. Yes.

20 Q Or in the main (phonetic)?

21 A Yes, yeah.

22 Q The musicians -- is it your belief or plan to pay whatever
23 you owe the musicians -- and I understand it's in dispute out of
24 proceeds from the concerts that you play if you're allowed back
25 in Verizon Hall.

1 A Along with contributions and sponsorships, yes.

2 Q Okay. And do you believe you'll be able to substantially
3 repay all of the POPS' debts, legitimate debts, that are not in
4 dispute if you're allowed back into Verizon Hall for the upcoming
5 2003-04 concert season?

6 MR. REED: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. DESTEFANO:

9 Q What's the POPS' plan? Does the plan include the payment of
10 most or all of your undisputed debts?

11 A Most, yes. I mean, clearly, we'd have to go through some
12 negotiation with some.

13 Q Okay. And would that include the Kimmel Center?

14 A Yes.

15 Q As the treasurer and member of the finance committee of the
16 POPS, do you feel that it is feasible if you're allowed back into
17 Verizon Center for the concert season, to substantially pay all
18 of the monies owed as well as a redemption of the tickets that
19 had been sold?

20 MR. DESTEFANO: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. DESTEFANO:

23 Q Is there a plan -- I think you mentioned there was a
24 feasibility study of some sort, but to your knowledge, is there a
25 plan to repay all or substantially all of your acknowledged debt

1 if you're put back into the Verizon Hall?

2 A There's a plan to pay most of them back, yes.

3 Q Okay. And those would be paid for how?

4 A Contributions and ticket sales.

5 Q That would -- you'd have an opportunity for if you're
6 allowed to play concerts?

7 MR. REED: Your Honor, objection.

8 MR. DESTEFANO: Okay.

9 THE COURT: Sustained --

10 MR. DESTEFANO: I'll withdraw.

11 THE COURT: -- Mr. DeStefano.

12 MR. DESTEFANO: Okay.

13 BY MR. DESTEFANO:

14 Q Now, historically, prior to this past season, were you
15 always allowed or consented to have payment plans that
16 contemplated the payment of Kimmel obligations out of proceeds of
17 upcoming concerts?

18 MR. REED: Objection, Your Honor. This is beyond the
19 scope of my cross.

20 MR. DESTEFANO: Oh, no, it's not. His cross was
21 designed to say, you're not going to be able to or you're not
22 going to -- you allowed the evidence to come in over my
23 objection, so I have to address it.

24 THE COURT: Overruled.

25 BY MR. DESTEFANO:

1 Q Do you remember the question?

2 A Yeah. To my knowledge, we had all kinds of different plans
3 and all through the years, yes.

4 THE COURT: Sustained at this point. I'm striking the
5 answer based on the response from the witness.

6 BY MR. DESTEFANO:

7 Q Up until this Christmas concert of last season, did the POPS
8 always manage, over time -- not necessarily in advance -- but at
9 or shortly after the performance of a subsequent conference, to
10 pay its obligations to Kimmel?

11 MR. REED: Your Honor, again, he's testifying. This is
12 leading.

13 MR. DESTEFANO: I don't think it's leading.

14 THE COURT: Mr. DeStefano?

15 MR. DESTEFANO: I don't think it's leading.

16 THE COURT: Understood -- I do.

17 MR. DESTEFANO: Okay.

18 THE COURT: Sustained.

19 MR. DESTEFANO: All right, all right.

20 BY MR. DESTEFANO:

21 Q What, up until this last debt, had been the practice or the
22 course of conduct between the Kimmel Center and POPS as to the
23 payment of obligations to the Kimmel Center?

24 A The course of conduct?

25 Q Yes.

1 A We would pay and sometimes it was late. As to my knowledge,
2 we paid, and we paid what we owed.

3 Q Did the Kimmel Center typically advance payment plans over
4 time for the payment of concerts -- previous concerts?

5 MR. REED: Your Honor, same objection, beyond the
6 scope.

7 THE COURT: Sustained as to that question.

8 BY MR. DESTEFANO:

9 Q These notices of default that you were shown, is it your
10 understanding -- what is your understanding as to whether or not
11 any notices of default, prior to the last, were cured?

12 MR. REED: Objection.

13 THE COURT: Sustained.

14 BY MR. DESTEFANO:

15 Q The defaults were cured.

16 MR. REED: Objection.

17 THE COURT: Sustained.

18 BY MR. DESTEFANO:

19 Q Do you know whether or not the defaults were cured?

20 MR. REED: Objection.

21 THE COURT: Sustained.

22 BY MR. DESTEFANO:

23 Q Did you or other people from the POPS continue to try to
24 negotiate with the Kimmel Center regarding the payment --
25 whatever was outstanding for the Christmas concerts, after you

1 were evicted?

2 MR. REED: Objection, Your Honor. Beyond the scope.

3 MR. DESTEFANO: Beyond the scope?

4 THE COURT: Mr. DeStefano?

5 MR. DESTEFANO: I don't think it's beyond --

6 THE COURT: I don't appreciate --

7 MR. DESTEFANO: -- the scope of the cross-examination.

8 THE COURT: Sir?

9 MR. DESTEFANO: Yes.

10 THE COURT: I'm showing you the respect to say that I
11 am not enjoying your running commentary.

12 MR. DESTEFANO: Okay. So the objection was sustained?
13 Okay. That's all I have on redirect, Your Honor.

14 THE COURT: Thank you very much.

15 MR. REED: Very, very brief.

16 THE COURT: And within the confines, please.

17 RECROSS-EXAMINATION

18 BY MR. REED:

19 Q You testified that the POPS always paid what it owed?

20 A To my knowledge, yes.

21 Q Have you paid what you owe to the Kimmel Center?

22 A The question was, I believe, had we paid what we owed prior
23 to that?

24 Q Pardon me. So my question to you now is have you paid what
25 you owe.

1 A No.

2 MR. REED: Thank you, Your Honor.

3 THE COURT: Thank you.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. DESTEFANO:

6 Q And what was the only reason why you didn't pay what you
7 believed you owed?

8 MR. REED: Objection.

9 THE COURT: Overruled.

10 A We couldn't -- couldn't perform. We had no income.

11 Q Thank you.

12 THE COURT: And just so we're clear -- could not
13 perform specifically --

14 THE WITNESS: At the Kimmel Center.

15 THE COURT: Thank you. Thank you. Anything else, Mr.
16 Reed?

17 MR. REED: No, Your Honor.

18 THE COURT: Thank you very much. Mr. Meko, thank you
19 very much. You may step down.

20 We are currently at 1:30, everyone. And given the fact
21 that this is running a little longer than I think we had
22 anticipated, I'm inclined to give everyone a break. I believe
23 that was your only witness; is that correct?

24 MR. DESTEFANO: Yes.

25 THE COURT: Anything on your end, Mr. Reed, just so I

1 can get a sense of timeline.

2 MR. REED: Well, Your Honor, I think we need to call
3 Ms. Corbin, since the witness couldn't identify many of the
4 documents.

5 THE COURT: Okay. Here's what we're going to do.
6 We're going to take a lunch recess then, and I'm going to allow
7 everyone to regroup. I'll see everyone back here in an hour --
8 2:30.

9 MR. REED: Thank you, Your Honor.

10 THE COURT: Thank you.

11 THE BAILIFF: All rise.

12 (Recess taken from 1:28 p.m. to 2:46 p.m.)

13 THE COURT: Okay. Mr. Reed?

14 MR. REED: I'd like to call Ms. Corbin, please.

15 THE COURT: Please.

16 THE CLERK: Please remain standing and raise your right
17 hand.

18 KAREN CORBIN, DEFENDANT'S WITNESS, SWORN

19 THE CLERK: Thank you. Please state your full name for
20 the record.

21 THE WITNESS: Karen Corbin.

22 THE CLERK: Thank you.

23 THE COURT: Thank you. Good afternoon, Ms. Corbin.

24 Mr. Reed your witness.

25 DIRECT EXAMINATION

1 BY MR. REED:

2 Q Good afternoon, Ms. Corbin.

3 A How are you?

4 Q I'm well. Thank you. How are you?

5 A Good. Thanks.

6 Q By whom are you employed?

7 A Encore Series, Inc. dba The Philly POPS.

8 Q And I'll refer to them as the POPS today. Is that okay?

9 A Yes.

10 Q What is your role at the POPS currently?

11 A Currently the president and CEO.

12 Q And when did you become the president and CEO?

13 A In March?

14 Q And before that, were you affiliated with the POPS?

15 A I was the chief operating officer.

16 Q And I should have asked. When you said March, March of this
17 year?

18 A Yes.

19 Q And before that, I'm sorry, what role did you serve?

20 A Chief operating officer?

21 Q And how long did you hold that role?

22 A September of 2019.

23 Q Okay. Continuously from September of 2019 until you became
24 the CEO?

25 A Yes.

1 Q And were you affiliated --

2 THE COURT: I'm sorry. I'm going to ask everybody to
3 keep their voice up a little louder for me.

4 THE WITNESS: Oh, okay. Sorry.

5 THE COURT: Just because it is being recorded. Thank
6 you, Ms. Corbin.

7 BY MR. REED:

8 Q And before that, the role you took in 2019, were you
9 affiliated with the POPS?

10 A Yes.

11 Q And what role did you have then?

12 A Vice President.

13 Q In total, how many years have you been -- have you worked
14 for the POPS?

15 A Nine.

16 MR. REED: Your Honor, permission to treat the witness
17 as hostile for this purpose.

18 THE COURT: Let's see if we get there, Mr. Reed. I

19 MR. REED: Well, all I do -- want to do is lead, Your
20 Honor. She's the CEO of the Plaintiff in this case.

21 THE COURT: I understand.

22 MR. REED: Yeah.

23 THE COURT: We'll get there if we need to get there.

24 MR. REED: Okay. Fair enough.

25 BY MR. REED:

1 Q Ms. Corbin, there's a binder in front of you. If I could
2 ask you, please, to turn to the document at Tab 2.

3 MR. DESTEFANO: I'm sorry. What was that Tab Number,
4 2?

5 THE WITNESS: Two.

6 BY MR. REED:

7 Q Do you recognize that document?

8 A Yes.

9 Q Have you seen it before?

10 A I have.

11 Q What is it?

12 A It's the amended and restated resident company license
13 agreement dated August 14th, 2018.

14 MR. REED: Your Honor, I'd offer that into evidence,
15 please.

16 THE COURT: So moved --

17 MR. DESTEFANO: I have only a relevancy objection.

18 THE COURT: Thank you. Overruled.

19 (Defendant's Exhibit 2 admitted into evidence)

20 BY MR. REED:

21 Q Ms. Corbin, would you turn to page 5 of the document at Tab
22 2 in your binder? Do you see that --

23 A I do.

24 Q -- page?

25 A Uh-huh.

1 Q And in paragraph 5, there's a reference to the term,
2 T-E-R-M. Do you see that?

3 A I do.

4 Q And you see that the term of this agreement extends through
5 June 30, 2023, correct?

6 A Yes.

7 Q To your knowledge, has that term been extended by the
8 parties?

9 A It has not.

10 Q Turn, if you would, to the -- near the back of the -- of
11 that document at Tab 2. There's a document that is titled,
12 Schedule 2. Do you see that schedule?

13 A I do.

14 Q Can you describe what that is, please?

15 A It's a schedule of rental and service rates.

16 Q And these were rent and service rates that were agreed to by
17 the parties in connection with this 2018 agreement?

18 A I was not in the capacity of that agreement at that time,
19 but I believe so.

20 Q You understand them to be the rates at -- to which the
21 parties agreed. Is that correct?

22 A Yes. Uh-huh.

23 Q Thank you. And you see in the left hand column under the
24 heading, KCI spaces, there's a reference to Verizon Hall?

25 A I do.

1 Q And you see the first column to the right reads 18,654-
2 slash-P?

3 A I do.

4 Q Did you see that? And then there's a figure to the -- in
5 the column to the right of that, 10,550-slash-P. Do you see
6 that?

7 A Yes.

8 Q And is it your understanding that that was the rent to be
9 paid for the use of Verizon Hall by POPS in -- for the 2018/2019
10 season?

11 A I really hadn't looked at those particular years. There's
12 an odd \$8,000 dip between the two and I wasn't, as I say, in
13 charge of that area at that time, but that's what the document
14 seems to say. In other words, it's \$8,000 cheaper in 18/19, than
15 it was in 17/18.

16 Q Understood. And then the column to the right says plus 3
17 percent for 19 -- the '19-'20 season, correct?

18 A It does.

19 Q And then plus 3 percent the following year. Correct?

20 A Yeah. Again, I'm unclear as to whether the plus 3 percent
21 is on the 10-5-50. It's just confusing the way it's laid out.

22 Q Okay. Okay. The last column in that row reads '22-'23.
23 Do you understand that to be the 2022-2023 season?

24 A I do.

25 Q And so the parties negotiated rates for rent through 2023 in

1 connection with this agreement, correct?

2 A They did.

3 Q Similarly, there's negotiated rates for services as listed
4 in the bottom half of Schedule 2 of this agreement, correct?

5 A Yes.

6 Q And again, those rates were negotiated through the term, the
7 entire term of this agreement through June 30 2023, correct?

8 A Well, actually, at the bottom, it indicates that they were
9 not negotiated at that time. It calls for a rack rental rate,
10 which implies to me that they were not negotiated then but would
11 have been negotiated in the subsequent years.

12 Q Fair point and thank you for that clarification.

13 A Uh-huh.

14 Q So for some services, like security, for example, there's a
15 negotiated rate and an agreed to 3 percent increase each year,
16 correct?

17 A Some. Significant number of ones that were left open.

18 Q Understood. Thank you. Okay. Let's turn then please
19 to -- we're going to move through this -- the document at Tab 5
20 of your binder. Do you have that document in front of you?

21 A The deferred payment schedule for amended and restated
22 resident company license agreement?

23 Q That's the re: line on this letter, yes.

24 A Yes. Yes.

25 Q Have you seen this document before?

1 A I have not.

2 Q We'll move right along then. So, let's go to the document
3 at Tab 6. Do you have that in front of you?

4 A I do.

5 Q Can you describe to the Court what that is?

6 A It's an amendment to amended and restated resident company
7 license agreement dated the second day of May 2019.

8 Q And is that a document that you've seen before?

9 A It is not.

10 Q Are you aware that the parties entered into an amended
11 license agreement on about May 2nd, 2019?

12 A If I could just look. I brought some notes so that I could
13 be sure. 2nd 2019 -- I discovered that there was such a
14 document, but did not see the exact document last week when I did
15 an analysis. I had not seen it prior.

16 Q Okay. And what you -- the notes that you just looked at,
17 that helps you to refresh your memory?

18 A Yes. I -- a lot of the pre-COVID documents were kept in
19 hard copy form, and so it was a bit of a search to make sure that
20 I put the right history together to be competent to testify
21 today.

22 Q Okay. And then -- so those -- that research refreshed your
23 memory?

24 A Yes.

25 Q Okay.

1 A Uh-huh.

2 MR. REED: Your Honor, I'd ask for a copy of those
3 materials, please.

4 THE COURT: Granted.

5 MR. REED: Okay.

6 BY MR. REED:

7 Q Okay. Were there an -- other than the document you just
8 handed me, which I guess for the record, your honor will mark
9 Defense Exhibit 1, were there any other documents that you
10 referred to or created that refreshed your recollection to
11 that -- for your testimony today?

12 A Regarding the Kimmel license agreement?

13 Q With regard to the subject matter of your testimony in this
14 case.

15 A So routinely, I gather information, in order to properly
16 analyze next steps for my position, but specifically for
17 testimony today, it really was limited to the examination of the
18 contents of the Kimmel contract, because it seemed called for in
19 some of the documents you had put forward earlier.

20 Q Okay. And was one of the documents that you reviewed this
21 May 2, 2019 amendment?

22 A I did not review it. I did not have the opportunity to
23 review it and believed that it was superseded by further
24 documents on the list I just gave you.

25 Q Okay. So you're aware that the amendment occurred. You

1 just didn't read it. Is that your testimony?

2 A I did not analyze it or look at it. That is correct.

3 Q Then to the best of your knowledge, you've never seen this
4 agreement?

5 A That's correct.

6 Q What other documents do you have with you in your binder?

7 MR. DESTEFANO: Objection.

8 THE COURT: What's your basis, Mr. DeStefano?

9 MR. DESTEFANO: Unless she uses it to refresh his
10 (sic), recollection, there's no entitlement to it and it doesn't
11 get marked as an exhibit.

12 THE COURT: She hasn't referred to anything additional
13 at this point, Mr. Reed, so do you have an argument for me as to
14 why you're entitled to it at this point?

15 MR. REED: Well, I think she -- she's never, frankly,
16 seen this before, but so she brought notes to aid her in her
17 testimony today, brought them up at the witness stand and has
18 referred to them. She pulled one page out of it, but I don't
19 know what else is in there.

20 THE COURT: That was the page that she had referred to
21 was all testifying. So at this point, I'm going to sustain the
22 objection. If she is referring -- does go back to refer to
23 anything, it does need to be turned over to you.

24 MR. REED: Thank you, Your Honor.

25 BY MR. REED:

1 Q Okay. So you're aware, through your review, that there was
2 an amendment in May 2019, correct?

3 A Yes.

4 Q Are you aware that as part of that amendment, the parties
5 negotiated a revised schedule for rent and fees?

6 A I was not, no.

7 Q Okay.

8 A And I -- let's see. I see it here. I had not seen this
9 particular document previously.

10 Q Okay.

11 A It was prior to my promotion to chief operating officer.

12 Q We'll skip it. Thank you.

13 A Uh-huh.

14 Q So turn, if you would please, to the document a Tab 9.

15 THE COURT: I'm sorry, counsel. 9, did you say?

16 MR. REED: 9.

17 THE COURT: Thank you.

18 BY MR. REED:

19 Q Do you see that document?

20 A I do.

21 Q And what is that?

22 A It's an email, an overnight delivery of an amended and
23 restated resident company license agreement dated August --
24 it's an amendment to the agreement dated August 14th, 2018, but
25 it's dated June 2nd, 2020.

1 Q Okay. So is -- you're referring to the re: line on this
2 letter, correct?

3 A Yes.

4 Q Have you seen this document before?

5 A No.

6 Q Okay. So are you aware -- and tell me now. This is June
7 2nd, 2020. What was your role at the POPS at that time?

8 A I was the chief operating officer. It was during the
9 pandemic and the early months of the pandemic.

10 Q But you were the chief operating officer --

11 A Yes.

12 Q -- of the POPS?

13 A Yes.

14 Q As the chief operating officer of the POPS, would you expect
15 to receive a copy of a notice of default from the Kimmel Center?

16 A At that time, not necessarily.

17 Q And you have no recollection of being told, informed that
18 the POPS had received a notice of default from the Kimmel Center
19 on or around --

20 A No, not in those words.

21 Q Well, how about your words. Were you aware that the POPS
22 was in default of its contractual obligations to the Kimmel
23 Center in June of 2020?

24 A I was.

25 Q How did you become aware?

1 A So before we had closed the office for the pandemic, which
2 was the week of March 10th, 2020 our credit card processing
3 agent, TSYS, had ceased contributing, you know, the flow of cash
4 that would be written into the ticketing system and were holding
5 onto any revenue being written through tickets or donations. And
6 they began that policy on March 10th. So at that point, it took
7 perhaps two weeks to track down what the issue was.

8 And you'll recall that if not on March 10th, but certainly
9 on March 15th, all of the offices closed down in Philadelphia, I
10 believe by mandate, although I'm not sure of the date of that.
11 So obviously, without revenue, it became clear to me that we were
12 going to have difficulty meeting our obligations, so I was aware
13 of that general strategy and this particular item, I believe was
14 handled by our then treasurer and chair of the finance committee
15 at that time.

16 Q So you're aware that POPS was in default for failure to pay
17 money owed to the Kimmel Center, correct?

18 A I was aware of the general climate. I did not see that we
19 were notified of default, no.

20 Q And again, my question is not about this letter, just your
21 knowledge about whether the POPS was in default at the time. And
22 I believe your testimony, but -- was that you were aware.

23 A I understand that we had not met our obligations. I think
24 there was particular language for default that I don't have in
25 front of me at this moment.

1 Q Okay. When you say you hadn't met your obligations --

2 A Uh-huh.

3 Q -- what obligations are you talking about?

4 A Obligations to accounts payable, obligations to staff.

5 Q Okay. And when you say accounts payable, what -- are you
6 saying that you failed to pay what you owed?

7 A That is correct.

8 Q Okay. Do you know how much you were in debt to the Kimmel
9 Center at that point?

10 A I certainly could research that. I, again, was not prepared
11 to testify in that level of detail today, but it certainly is
12 information I could discover.

13 Q If you were told that the Kimmel Center was telling the POPS
14 that at the time, it had failed to pay nearly \$550,000 in past
15 due amounts, would that surprise you?

16 A I'm just looking at the date range to make sure I
17 understand. I do know that number, because we did develop a
18 payment plan for it and we cured the default. I do know that
19 number, yes.

20 MR. REED: Your Honor, I move to strike the answer as
21 nonresponsive.

22 MR. DESTEFANO: I think it was responsive.

23 THE COURT: Well, I think we're looking for a number
24 specifically with regards to 550,000. Sustained. Stricken.

25 MR. REED: Okay.

1 /////

2 BY MR. REED:

3 Q Let's move to the document that's at Tab 11 of your binder.

4 Let me know, please, when you're there.

5 A Uh-huh.

6 Q Can you describe, please, what that document is?

7 A It's an email overnight delivery notice of default.

8 Q Have you seen this document before?

9 A I have not. Again, the office was closed at this time and I
10 was not copied on this.

11 Q And again, what was your title at -- as of July 1st, 2020?

12 A Chief operating Officer.

13 Q And as chief operating officer, your testimony is you did
14 not receive a notice of default from the Kimmel Center?

15 A That is my testimony.

16 Q Were you made aware on or about July 1, 2020 that the POPS
17 had received a notice of default?

18 A I was not.

19 Q Had you been told that the Kimmel Center was asserting that
20 the POPS owed \$548,000 at the time?

21 A Again, I recognize that number specifically, but I cannot
22 state today when that number came to my attention when the office
23 was closed during the pandemic.

24 Q Who was the CEO of the -- POPS at the time?

25 A We did not have a CEO.

1 Q Who was the president? Did you have a President?

2 A Frank Giordano, who was the recipient of these documents,
3 was a board member, also titled president at that time. He was
4 not a member of staff.

5 Q And were you in communication with Mr. Giordano during the
6 pandemic?

7 A Yes.

8 Q Regularly?

9 A Yes.

10 Q Turn, if you would, to the document at Tab 12. Can you
11 identify that, please?

12 A This is an amendment to the resident company license
13 agreement dated August 14th, 2018 that deals with the cure for
14 the \$548,000 amount due.

15 Q And have you seen this document before?

16 A I was given it after the fact, yes.

17 Q Okay. So you recognize this document?

18 A I do.

19 Q Do you have any reason to believe this is not a true and
20 correct copy of that amendment?

21 A It is.

22 MR. REED: Your Honor, I'd offer it in evidence,
23 please?

24 THE COURT: So moved.

25 MR. DESTEFANO: Again, relevancy.

1 THE COURT: Overruled.

2 (Defendant's Exhibit 12 admitted into evidence)

3 BY MR. REED:

4 Q Ms. Corbin, if you would, turn the second page of that
5 document at Tab 12 and there's a section 3-B. Do you see that?

6 A I do.

7 Q Begins, "Time is of the essence." Do you see that?

8 A I do?

9 Q Did you understand at the time that the Kimmel Center's
10 position was that time was of the essence for POPS to pay what it
11 owed under the license agreement?

12 A Certainly.

13 Q On the next page at the very top, you see a section E?

14 A I do.

15 Q Okay. And would you read the first sentence of that
16 section, please?

17 A "Licensee shall pay to KCI 100 percent of the fees or
18 estimates thereof for each use of the premises no later than 30
19 days in advance of such use."

20 Q Thank you. Was it your understanding that that was Pop's
21 obligation to KCI under the agreement?

22 A Under the terms of this amendment, which I believed was
23 retired in September of this year, yes. I did understand that.

24 Q Okay. Turn to the document at Tab 13, please. And you see
25 there's an email that is addressed to you, Karen Corbin. You see

1 that?

2 A Yes, I do.

3 Q Is that -- do you recognize this email addressed to you,
4 dated December 30, 2022?

5 A I do.

6 Q And there's an attachment to that email, correct?

7 A Uh-huh.

8 Q It's also at Tab 13, right?

9 A Uh-huh.

10 THE COURT: Is that a yes?

11 THE WITNESS: Yes. Sorry.

12 BY MR. REED:

13 Q And that's an invoice, correct? It has invoice at the top?

14 A The attachment does, yes.

15 Q And it's address to Encore Series, Inc.,
16 Corbin-comma-Karen. That's you, right?

17 A It is.

18 Q And it's dated, if you look at the upper right, December 30,
19 2022, correct?

20 A It is.

21 Q And do you recognize this invoice?

22 A Of course.

23 MR. REED: Your Honor, I'd offer both the email and the
24 invoice into the evidence.

25 MR. DESTEFANO: Objection.

1 THE COURT: Thank you. Overruled.

2 (Defendant's Exhibit 13 admitted into evidence)

3 BY MR. REED:

4 Q Have you reviewed this invoice that's at Tab 13 of your
5 binder?

6 A I turned it over to Matt Kovial (phonetic), also copied on
7 this invoice, who was at that point, head of production for his
8 review, since he is the person who would have used the facility
9 on a daily basis and asked for him to return it to me upon his
10 getting through that document.

11 Q Ms. Corbin, thank you, but I'd ask you to answer my
12 question. My question is, did you review this invoice?

13 A I did not review it in that way. No, I would not have had
14 the information to. I looked at it. If you're asking me if I
15 looked at the total, I did.

16 Q Did you review the entries on this invoice?

17 A I did not.

18 Q Do you have any reason to believe that the charges reflected
19 on this invoice are inaccurate?

20 A Yes.

21 Q What is that?

22 A We've had ongoing billing problems with the Kimmel over
23 time, so they were always handled by a careful review and a line
24 by line analysis and there often were anomalies. So that's the
25 process we entered into with this invoice as a standard operating

1 procedure.

2 Q And you'll see if you look at 13 that the amount for
3 rent -- I'll give you an example. There's a number of them. If
4 you look at page 1 of 5 on the invoice. So it's the second page
5 of the document at Tab 12 -- excuse me, Tab 13 behind your email.
6 I'm going to confuse you. It's the first page of the invoice.

7 A First page of the invoice. Okay.

8 Q And you see near the bottom, there's a line, Verizon Hall
9 slash PERF. You see that?

10 A I don't.

11 Q There's a number. Maybe this will help you. So again,
12 you're on page 1 of 5 of the invoice, correct?

13 A I am.

14 Q Okay. So 1, 2, 3, 4 lines from the bottom, the line is the
15 number --

16 A Oh, yes.

17 Q Do you see it?

18 A I see it. Thank you.

19 Q Of course. Of course.

20 A Uh-huh.

21 Q And if you follow it from Verizon Hall performance, you see
22 charges \$11,874, correct?

23 A I do.

24 Q And that's the amount of rent that was being charged,
25 correct?

1 A Yes.

2 Q Do you believe that that amount is accurate?

3 A I have no reason to believe the rents would differ from the
4 expected charge, no.

5 Q Right. In fact, that that is the number that the parties
6 had agreed. That is the cost to rent the facility that the
7 parties had agreed to years earlier, correct?

8 A Again, that's that 3 percent lift and I would have to go
9 back and research this to get to the right amount, but it seems
10 to be accurate. That would be the last place I would look for an
11 anomaly.

12 Q Well, let's go -- yeah. So let's go to Tab 6, please, the
13 last page of Tab 6. You see that?

14 A I do.

15 Q And there's a Schedule 2 and if you look at the top line
16 Verizon Hall slash performance far right under 22-23, \$11,874,
17 right?

18 A Right. The document that I had testified I had not seen,
19 yes.

20 Q Do you have any reason to believe that that isn't the rent
21 that POPS agreed to pay?

22 A No.

23 Q Okay. Let's keep going, so we can get you out of here. So
24 Tab 15, please. Do you have that in front of you?

25 A I do.

1 Q That's a document dated January 17th, 2023, correct?

2 A It is.

3 Q At that point, you're still the COO of the POPS, correct?

4 A I am.

5 Q Have you seen this document?

6 A I'm just going to look at that same document that you
7 already have. I believe I have seen it.

8 Q And this is the letter that POPS received, notifying it that
9 it was being suspended from operation --

10 A Yes.

11 Q -- at the Kimmel Center?

12 A I said I believe -- now that I've read it, I have seen it.
13 Okay?

14 Q And this is an true and correct copy of that letter, to the
15 best of your knowledge?

16 A To the best of my knowledge, yes.

17 MR. REED: Your Honor, I'd offer that into evidence,
18 please.

19 THE COURT: So moved.

20 (Defendant's Exhibit 15 admitted into evidence)

21 BY MR. REED:

22 Q You see the second paragraph of that letter begins with the
23 sentence, "Unfortunately." Do you see that?

24 A I do.

25 Q And actually I'm going to ask you to skip down to the last

1 sentence in that paragraph, beginning, "The last payment." Do
2 you see that?

3 A I do.

4 Q Could you read that last sentence, please?

5 A "The last payment POKC has received from licensee was
6 \$160,000 on September 16th, 2022."

7 Q Do you have any reason to dispute that that -- in fact, that
8 that sentence is accurate?

9 A That sentence is accurate.

10 Q So in fact, the last payment that the POPS has made to POKC
11 was back in September of 2022?

12 A Yes.

13 Q In the amount of 160,000?

14 A Yes.

15 Q And that was before the Christmas concerts performed --

16 A Yes.

17 Q -- in 2022? No payment has been made by the POPS since?

18 A That's correct.

19 Q Turn if you would, please, to the document at Tab 18 of your
20 binder. Do you see that?

21 A I do.

22 Q Do you recognize that document?

23 A I do.

24 Q You've seen this before?

25 A Uh-huh.

1 Q Can you describe it for the record, please?

2 A It's an official notice that the Philly POPS has been added
3 to the American Federation of Musicians on unfair list.

4 MR. REED: I'd move this into the record, please.

5 THE COURT: So moved.

6 (Defendant's Exhibit 18 admitted into evidence)

7 BY MR. REED:

8 Q In addition to notifying the POPS that it had been placed on
9 the unfair list, the notice reads in part, quote, "AFM members
10 shall not render musical services for organizations,
11 establishments or people who have been placed on the
12 international unfair list," correct?

13 A Yes.

14 Q In short, the musicians in the union are not permitted to
15 play for the POPS, right?

16 A At this moment.

17 Q That remained -- it was true when you received this notice
18 in around March 9th of this year, correct?

19 A Yes.

20 Q And it remains true today?

21 A Yes.

22 Q In fact, the union has sued the POPS, correct?

23 A Yes.

24 Q Would you turn to the document at Tab 19. Do you see that?

25 A Yes.

1 Q Do you recognize this to be the complaint that the union
2 filed in federal court against the POPS?

3 A I do.

4 MR. REED: Your Honor, I'd move this into the record.

5 MR. DESTEFANO: Objection.

6 THE COURT: Basis?

7 MR. DESTEFANO: Again, relevance to the specific issued
8 identified for resolution or evidence today.

9 THE COURT: The musicians would -- or availability of
10 the musicians themselves would go to the irreparable harm issue,
11 unless I'm missing something here. I don't believe I am. Okay.
12 Overruled.

13 (Defendant's Exhibit 19 admitted into evidence)

14 BY MR. REED:

15 Q Turn, if you would, to page 6 of that document at Tab 19 of
16 your binder. Do you see that?

17 A I do.

18 Q You see Paragraph 37, at the top of that page?

19 A I do.

20 Q And you see that the union is asserting that the POPS owes
21 not less than \$313,472.55 --

22 A Yes.

23 Q -- correct?

24 A That is their assertion.

25 Q Is this litigation ongoing?

1 A It is.

2 Q Turn to page -- Tab 20, please, the document at Tab 20. And
3 do you recognize that to be the POPS' answer to --

4 A I do.

5 Q -- the complaint?

6 MR. REED: Your Honor, I'd offer that into evidence.

7 THE COURT: So moved.

8 (Defendant's Exhibit 20 admitted into evidence)

9 BY MR. REED:

10 Q Turn, if you would, to page 7 of that document. At the top,
11 you'll see the number 15. Do you see that, paragraph 15?

12 A Yes.

13 Q And there's an answer to paragraph 15, correct?

14 A Yes.

15 Q And the last sentence of that answer states, quote, "The
16 POPS recently received the grant for the December 10th, 2022
17 event and will apply such grant once amounts due and owing are
18 agreed upon with Plaintiffs," correct?

19 A Yes.

20 Q Has that grant been paid to the musicians yet?

21 A I think it reads once the amount is due and agreed upon with
22 Plaintiff, so it has not been. We have not made an agreement.

23 Q And so you've made no payment --

24 A That's correct.

25 Q -- to the musicians?

1 THE COURT: If -- I just have a clarification. Did you
2 receive that grant money? Did the POPS receive the grant money?

3 THE WITNESS: We did. It was a much larger grant for a
4 longer period of time. It wasn't specific to this use, but we
5 did receive the money six months later than expected.

6 THE COURT: Okay. Thank you.

7 BY MR. REED:

8 Q Where's that money now?

9 A The money was applied to other musician payments that
10 occurred in July and December, other than this and to other
11 expenses that were related to the production of the Salute Series
12 in the Calendar Year 2022.

13 Q So the money's been spent?

14 A Yes.

15 THE COURT: How much was that grant? I apologize. How
16 much was that grant?

17 THE WITNESS: The grant was \$300,000.

18 THE COURT: Thank you.

19 BY MR. REED:

20 Q How much of that 300,000 remains?

21 A The grant has been used to cover expenses that existed from
22 December and May, so it is not still available for this use. The
23 grant did not specify this specific use.

24 Q So you don't have any of the 300,000 left?

25 A Very little.

1 Q Oh, very little?

2 A Uh-huh.

3 Q How much?

4 A I -- you know, I don't know. I'm happy to go back and do
5 that again. I did not expect any of this detail to be asked
6 today.

7 Q Turn, if you would, please, to the document at Tab 21. Are
8 you there?

9 A Yes.

10 Q And you recognize that document to be the answer and
11 affirmative defenses of Defendants and counterclaims that my
12 clients filed in this lawsuit?

13 A I do. Uh-huh.

14 Q You've seen this before?

15 A I have.

16 Q Turn, if you would, please, to --

17 MR. DESTEFANO: I'm going to object to that. Again,
18 answers and counterclaims not being relevant, again, to this
19 specific issue that we have for discussion here today.

20 MR. REED: Your Honor, I'm not entering, or offering,
21 rather, our pleading into the -- into evidence. Sorry. I'm not
22 being very articulate. It's already before you. I'll cite it
23 later. I'm not asking you to, to accept it into evidence.

24 THE COURT: Understood and I do see the relevance here,
25 based on our inquiries today. Thank you. Overruled.

1 BY MR. REED:

2 Q Ms. Corbin, turn to the document at Tab 23.

3 A 23? Yes.

4 Q And do you recognize that to be the Pop's answer and
5 affirmative defenses to the Defendant's counterclaims in this
6 case?

7 A I do.

8 Q Did you review this document before it was filed?

9 A Yes.

10 Q Did you authorize your attorneys to file it?

11 A Yes.

12 Q Paragraph one of this frankly bizarre answer lists a number
13 of paragraphs --

14 MR. DESTEFANO: I'm going to object.

15 THE COURT: Sustained, Mr. Reed.

16 MR. REED: I apologize, Your Honor. That wasn't called
17 for it, although I do want to note for the record my serious
18 concerns about this answer. It doesn't comply with the rules and
19 we --

20 THE COURT: And --

21 MR. DESTEFANO: -- and we want to address it later.

22 THE COURT: Understood. Thank you.

23 MR. REED: But there was no call for the comment. I
24 apologize. Withdrawn.

25 BY MR. REED:

1 Q Paragraph 1 lists a number of paragraphs that are admitted
2 by the POPS, correct?

3 A It does.

4 Q Among those paragraphs is paragraph number 169, correct?

5 A Yes.

6 Q Okay. And just for the sake of completion, turn back the
7 tab -- the document at Tab 21 and turn, if you would, please, to
8 paragraph 169 of the counterclaims. You'll find that at page 45
9 of the document. Do you have that?

10 A Yes, I do.

11 Q Would you read for the Court what's alleged in paragraph 169
12 --

13 A "As of," --

14 Q -- which the POPS has admitted?

15 A "As of June 20th, 2023, the POPS owes KCI 561,000 in
16 outstanding rent and fees, inclusive of interest in late
17 penalties."

18 MR. REED: And Your Honor, I'll just represent for the
19 record that, that there are further allegations in paragraphs,
20 170, 171 and 172 that are not answered at all in their answer,
21 not denied, and so should be deemed admitted, but you won't find
22 them in the POPS' answer.

23 THE COURT: Thank you.

24 BY MR. REED:

25 Q Ms. Corbin turn, if you would, please, the document at Tab

1 24 of your binder. Do you have that in front of you?

2 A Yes, I do.

3 Q And you recognize that to be an excerpt from the POPS'
4 website?

5 A Yes.

6 Q And I'll represent that that was -- this was printed, and so
7 last visited on July 21st of this year.

8 MR. REED: And Your Honor, I'll offer this into
9 evidence.

10 THE COURT: So moved.

11 (Defendant's Exhibit 24 admitted into evidence)

12 BY MR. REED:

13 Q If you turn to the third page of the document at Tab 24 at
14 the top of that page, you'll see the first line reads, "I'll be
15 home for Christmas." Do you see that?

16 A Yes, I do.

17 Q The last sense of that paragraph begins, "The Philly POPS,"
18 correct?

19 A Yes.

20 Q Would you read that sentence into the record, please?

21 A "The Philly POPS performs as the principal orchestra of the
22 Met Philadelphia and at venues through the Mid-Atlantic region."

23 Q Throughout the Mid-Atlantic region? Is that what it says?

24 A Over time, yes.

25 Q I'm sorry. Did I miss the misread it? What does it say

1 gain?

2 A Sir, it says at venues throughout the mid-Atlantic region.
3 I didn't want you to be confused to think that that was ongoing
4 today.

5 THE COURT: Okay. Again --

6 THE WITNESS: Okay. So I've read it.

7 THE COURT: -- Mr. Reed's question is very
8 specific --

9 THE WITNESS: Okay.

10 THE COURT: -- and he asked you to read it.

11 THE WITNESS: Okay. I did.

12 MR. REED: So Your Honor, I'd move to strike the last
13 answer. Let me ask the question again, if I may.

14 THE WITNESS: "The Philly POPS" --

15 THE COURT: Hold on.

16 THE WITNESS: Oh, sorry.

17 THE COURT: It's stricken. You may re-ask the
18 question, please.

19 BY MR. REED:

20 Q Would you please read verbatim the last sentence of that
21 paragraph?

22 A Of course.

23 Q Thank you.

24 A "The Philly POPS performs as the principal orchestra of the
25 Philadelphia and at venues throughout the Mid-Atlantic region."

1 Q Thank you. And there's a photograph on that page? Do you
2 see that below?

3 A Yes.

4 Q Where's that picture taken?

5 A At the Met.

6 Q Thank you. I have no more questions.

7 THE COURT: Mr. DeStefano.

8 CROSS-EXAMINATION

9 BY MR. DESTEFANO:

10 Q Despite the document that was shown to you regarding the do
11 not work for list of the union and Philly POPS being on that
12 list, are you familiar with or participate in the negotiations
13 between the union and the POPS over this litigation dispute?

14 MR. REED: Objection, Your Honor. It's beyond the
15 scope.

16 MR. DESTEFANO: No.

17 THE COURT: Overruled.

18 BY MR. DESTEFANO:

19 Q Are you familiar with the negotiations between --

20 A Yes.

21 Q -- the POPS and --

22 A Yes, I am.

23 Q -- notwithstanding that letter?

24 A Yes.

25 Q Okay. Having participated in those negotiations, is it your

1 belief that you will be able to get the union back to work on
2 while this litigation is ongoing, but to work on any concerts
3 that you have -- are able to schedule in Verizon Hall for the
4 upcoming season?

5 THE COURT: I'm going to interrupt and ask you to
6 rephrase, because I'm clear --

7 MR. DESTEFANO: Okay.

8 THE COURT: -- as to the question, please.

9 MR. DESTEFANO: All right.

10 BY MR. DESTEFANO:

11 Q Having participated in those negotiations with the union
12 that are ongoing, is it your belief that you will be able to get
13 the musicians, the union musicians, back to work on any concerts
14 that you may be able to perform in Verizon Hall during the
15 upcoming season?

16 A Yes.

17 Q Okay. Please explain what leads you to believe that.

18 A Sorry?

19 Q Please explain.

20 A The digital payment that became overdue in March was not for
21 a performance. It was for a digital distribution and there were
22 disputes about the amount of that, as there often are in the
23 digital realm. So we believe that we can achieve a settlement on
24 that and that is the direction that our attorney assigned to that
25 project has to achieve a settlement as soon as possible.

1 Q And if you are allowed back into the Horizon Hall, how would
2 you pay that?

3 A The conditional nature of our fundraising has already been
4 explained. I believe that we have folks waiting for the results
5 of this hearing in order to fund the ongoing efforts of the POPS
6 both at the Kimmel and for the outdoor concerts that occur
7 seasonally. And of course, we would begin to sell tickets.

8 Q The \$561,000 amount that the POPS admitted it owes for the
9 Christmas concert, what's the reason why that has not been paid
10 as of yet?

11 A So, as we saw, the invoice arrived, I believe December 30th
12 and obviously the office was closed for the holidays. As we
13 said, about reviewing the invoice, the eviction occurred and we
14 were not able to sell tickets, which would have allowed us to
15 continue payments to the Kimmel. Further, we were negotiating
16 terms to complete the season throughout the time frame from
17 September through December. And therefore, were awaiting the
18 total and the result of those negotiations, which that
19 arrangement never came to fruition.

20 Q Had you not been evicted by the POPS, would you have derived
21 sufficient revenues, whether it be contributed or ticket sales to
22 pay that obligation?

23 THE COURT: I apologize. I'm going to interrupt before
24 I even entertain your objection, Mr. Reed. I want to make sure
25 I'm understanding Ms. Corbin's testimony.

1 MR. DESTEFANO: Okay.

2 THE COURT: Ms. Corbin, you're saying that you were in
3 the middle of renegotiating with the Kimmel Center at the time?

4 THE WITNESS: Yes.

5 THE COURT: So your -- it's your position that the
6 eviction basically ended those negotiations and the eviction also
7 made it so that you were not able to continue selling tickets to
8 pay for your past debts?

9 THE WITNESS: It did pause the negotiations. We tried
10 again down the line to enter into a payment plan negotiation
11 again, but we did present a payment plan on January 3rd to a
12 representative of the Kimmel that would have retired this
13 obligation.

14 THE COURT: I guess -- I want to make sure I'm
15 understanding. At the same time that you are in default for the
16 nonpayment of -- to the tune of over \$500,000, you're attempting
17 to renegotiate terms with the Kimmel Center?

18 THE WITNESS: No, the timing's off. The payment plan
19 was delivered prior to the notice of default.

20 THE COURT: Okay. But your lack of payment had already
21 occurred, correct? You were already behind.

22 THE WITNESS: I don't believe so. I think that we
23 routinely had paid the Kimmel for Christmas over the next five
24 months for years and had had payment plans for years and we had
25 every expectation that another payment plan would be accepted.

1 So our intent was to pay as we had in previous years.

2 THE COURT: So you're relying on the goodwill of the
3 Kimmel Center to continue that arrangement. That was the
4 business model?

5 THE WITNESS: That was the business model.

6 MR. DESTEFANO: That's all I have.

7 THE COURT: Anything additional.

8 MR. REED: No, Your Honor. Thank you.

9 THE COURT: Thank you, Ms. Corbin.

10 Any additional witnesses?

11 MR. JOHNS: Your Honor, we call Mario Mestichelli,
12 please.

13 THE COURT: Okay. And counsel, forgive me. Mr. Johns?

14 MR. JOHNS: Correct.

15 THE COURT: Thank you.

16 MR. DESTEFANO: All right.

17 THE COURT: Do you need to speak with me?

18 MR. DESTEFANO: I'm having a problem with the notice
19 that -- I think I read the notice of witnesses, that they had no
20 witness. Now we're getting a witness that has been undisclosed.

21 THE COURT: So let me ask Mr. Jones for a proffer,
22 please.

23 MR. JOHNS: Your Honor, if I may.

24 THE COURT: Please.

25 MR. JOHNS: In the correspondence that we sent to Mr.

1 DeStefano yesterday and then also to your chambers, we attached
2 an affidavit from --

3 THE COURT: Uh-huh.

4 MR. JOHNS: Mr. Mestichelli and then indicated we may
5 call him as a witness and so that is what we are attempting to do
6 now.

7 MR. DESTEFANO: Which we object to on the grounds that
8 the affidavit was largely if not completely not on the point that
9 was designated for discussion today, namely the, the irreparable
10 harm aspect of it. I read Mr. Mestichelli's affidavit as talking
11 mostly about payments and payments that were missing, payments
12 that were not missing, which I think is fairly clear there was
13 some negotiation and disputes over that over that whole issue.
14 And how does that go to irreparable harm? I don't see it.

15 MR. JOHNS: Your Honor, if I may?

16 THE COURT: Please.

17 MR. JOHNS: The question for irreparable harm is
18 whether or not the injunction will -- excuse me -- thank you --
19 whether the injunction will prevent the harm. It is necessary.
20 The injunction must be necessary to prevent the harm. Mr.
21 Mestichelli is going to talk, number one, about, in rebuttal to
22 what we've heard already today.

23 And number two, he's going to explain about the debts
24 that have been incurred, number one, for historic performances
25 and debts and that would be incurred if they were required to

1 continue to perform in Verizon Hall. Those types of things that
2 -- whether or not those could even be paid, is an open question.
3 And it goes to whether or not the injunction would actually solve
4 for the harm that the POPS has alleged.

5 THE COURT: One second. I'm reviewing the
6 correspondence from yesterday.

7 MR. JOHNS: Of course.

8 THE COURT: We're going to take a brief ten minute
9 recess, please.

10 THE BAILIFF: All rise.

11 (Recess taken from 3:34 p.m. to 3:46 p.m.)

12 THE COURT: -- position, however, I am precluding his
13 testimony, based on the -- and his affidavit, based on the
14 limited scope of this evidentiary hearing today. Any additional
15 witnesses?

16 MR. REED: None from Defense, Your Honor.

17 THE COURT: Okay.

18 MR. DESTEFANO: None.

19 THE COURT: Okay. I'll hear from you? Would you like
20 to make -- anybody like to make closing statements? Briefly.

21 MR. DESTEFANO: Yes, but let me ask a question. Are
22 you going to require a briefing on this issue?

23 THE COURT: No.

24 PLAINTIFF CLOSING ARGUMENT

25 MR. DESTEFANO: Your Honor, our case is that the --

1 well, I'm not going to argue our case, because we're in a narrow
2 scope of this, but the --

3 THE COURT: Let me interrupt --

4 MR. DESTEFANO: -- irreparable harm point --

5 THE COURT: -- you, Mr. DeStefano --

6 MR. DESTEFANO: Yeah.

7 THE COURT: -- just so that we can make sure that we're
8 on the same page.

9 MR. DESTEFANO: Sure.

10 THE COURT: Are you agreeing that we're actually in the
11 realm of a mandatory injunction here?

12 MR. DESTEFANO: Oh, yeah.

13 THE COURT: As threshold issue. I want to make sure
14 we're clear here, because that was unclear based on your opening.

15 MR. DESTEFANO: The --

16 THE COURT: So are you conceding that this would be a
17 mandatory injunction?

18 MR. DESTEFANO: Yes. This would definitely be a
19 mandatory injunction.

20 THE COURT: Okay. Thank you.

21 MR. DESTEFANO: All right. I submit, Judge, we -- that
22 we complied with the standard for irreparable harm, that it's
23 harm that can't be measured in money damages. It's harm that
24 will occur, a substantial harm. And it's harm that -- there's
25 -- assuming the other elements are met, it's harm that is -- it

1 doesn't have to be immediate. There's several cases in this
2 jurisdiction, which hold pretty clearly. A case by Judge Roof,
3 which I will dig it out. It was affirmed by the Court of
4 Appeals.

5 Loss of reputation, loss of trade, loss of goodwill.
6 They constitute irreparable harm, because they're hard to
7 measure. And I think the proofs here is that there has been and
8 will continue to be loss of reputation, goodwill, harm that can't
9 be measured in money damages and will be devastating to the POPS,
10 unless they're allowed to get back into Verizon Hall.

11 Judge -- the case with Judge Roof --

12 THE COURT: Can you give me the case name, please?

13 MR. DESTEFANO: Yes. It's Instant Air Freight Company
14 v. CF Air Freight, Inc.

15 THE COURT: Thank you, yes.

16 MR. DESTEFANO: And I'll just give you the holding.
17 However, if the economic loss would force the business to shut
18 down, then irreparable harm may be found. And I think it's
19 pretty clear on the evidence here that if not allowed back into
20 Verizon Hall, the POPS business would have to shut down. And I
21 think it's pretty clear it's insolvent. It has no prospect of
22 gaining any revenues that it could work with to pay back these
23 debts and become solvent, unless it's allowed back in Verizon
24 Hall and is allowed -- be able to reopen the tap to contributed
25 revenue, to ticket sales.

1 And I think it's pretty clear from the evidence here,
2 too, is that the POPS has always been allowed to pay over time,
3 so to speak, rather than immediately upon the concert.

4 THE COURT: But Mr. DeStefano, isn't that, in part, why
5 we're here? I mean, Ms. Corbin just testified that that was more
6 or less their business model was to rely on the hope.

7 MR. DESTEFANO: Well, it's not a hope. I think it's
8 more a course of conduct, Your Honor. The -- you know, keep in
9 mind that the Kimmel Center is a nonprofit. Its mission is to
10 provide a space to play for the performing arts. Its mission is
11 not to have weddings or whatever. And that, yes, there have been
12 contractual agreements.

13 THE COURT: Correct.

14 MR. DESTEFANO: But they've always been adjusted by the
15 party until when? Until -- and you saw those emails and
16 whatever, the Philadelphia orchestra and the successor to Kimmel
17 Center, POKC, basically demanded, requested cajoled, did whatever
18 they could to get the POPS to stop performing and go out of
19 business. And when the POPS refused to do that, then came a sea
20 change in the attitude of the Kimmel Center.

21 THE COURT: We're here for the injunction.

22 MR. DESTEFANO: I understand.

23 THE COURT: Okay. so I want --

24 MR. DESTEFANO: We're here for the irreparable harm.
25 Okay.

1 THE COURT: Right. And Mr. DeStefano, what I'm saying
2 to you is we have multiple documents and agreements here.

3 MR. DESTEFANO: Right.

4 THE COURT: And in the end, I'm assuming, that the
5 Kimmel Center itself would like to continue being a
6 nonprofit --

7 MR. DESTEFANO: Right.

8 THE COURT: -- that is financially stable to provide
9 that venue --

10 MR. DESTEFANO: Right.

11 THE COURT: -- for other important assets, frankly, to
12 the Philadelphia community in the art world, in the musical art
13 world. So if they're saying that they need -- that they demand
14 payment, right? You're asking -- you're saying that your clients
15 relied on the fact that they gave grace before, that they would
16 give grace again.

17 MR. DESTEFANO: I think when the repeated conduct was
18 to -- and I'm not sure it's grace. It's to accommodate the need
19 for -- year after year, the need for -- we got to sell a few more
20 concerts to get you the money that we owe you for the concerts
21 before. This became a common thing. And you know, the course of
22 conduct -- you know, contracts can be amended by a course of
23 conduct.

24 And the issue here in this case is why did that course
25 of conduct change and we allege it's part of plan or a scheme or

1 a series of conduct that was specifically intentionally intended
2 to force the POPS to go out of business and it will do so, unless
3 it is allowed in back -- in Verizon Hall. And I think if you're
4 looking at the injunction part of this case or the irreparable
5 harm, yes, irreparable harm will clearly befall the Philadelphia
6 POPS succession of business, no attempt to retrieve whatever
7 goodwill was already lost.

8 And if we're narrowly focusing on that issue, I think
9 legally the POPS has gotten over that issue. I make no argument
10 on -- I mean, we've briefed and whatever on the other elements,
11 the likelihood of success on the merits, the -- you know, we have
12 an essential facilities case here, too. I mean, you know, it's a
13 lease or no lease. It's -- or -- right or no lease. It's -- can
14 be an antitrust violation, violation of the Sherman Act to deny
15 access to an essential facility. And that's one of our claims.

16 But again, we're not arguing the merits here. I'm just
17 focusing on the essential element of irreparable harm. And if
18 we're focusing on that and that's the purpose of this hearing, I
19 think we've made our case.

20 THE COURT: Thank you, sir. Mr. Reed.

21 DEFENDANT CLOSING ARGUMENT

22 MR. REED: Thank Your Honor. I'll be brief. I
23 think -- assume I can speak on behalf of all parties. We really
24 appreciate the Court's time and attention to this matter. I know
25 this is longer than you had anticipated. It was longer than I

1 anticipated, but we really do appreciate your attention to this
2 important matter. I'll be brief. And I'll touch on some themes
3 that I touched on in the opening.

4 First of all, it's now conceded that what the POPS is
5 seeking is a mandatory injunction, right? No dispute that the
6 license agreement has terminated. There's no new license
7 agreement. So they're asking for an injunction that forces my
8 clients to do business with the POPS, notwithstanding the absence
9 of an agreement and notwithstanding the fact that they've
10 admitted now that they owe at least more than \$500,000 that
11 should have been paid under the terms of the agreement that said
12 time is of the essence.

13 So -- but we're talking about a mandatory injunction
14 and that has significance for this process and for the question
15 that you've raised in this hearing, because they are subject to a
16 much more stringent standard under the law. It's the Hope
17 decision, H-O-P-E. We've used that term in a different -- a
18 couple of different ways now, but the case I'm referring to is a
19 Third Circuit decision from 2020 and it's very clear that there's
20 a heightened standard that they must meet on all elements,
21 including on the irreparable harm element.

22 Mr. DeStefano said there's no requirement of immediacy.
23 He's wrong. That's not the law. The Hohe, H-O-H-E decision,
24 also cited our brief. It's a Third Circuit decision 1989, states
25 very clearly that the irreparable harm must be both clear and

1 immediate. Clear and immediate. Let's talk about clear first.
2 There's no clear showing of harm here. I think what we heard is
3 that the POPS have significant financial problems. I think
4 that's probably something that my clients won't dispute.

5 But what they haven't done is given you the clear
6 showing that the Court -- that the law requires to conclude that
7 irreparable harm will occur, if they don't get the order that
8 they seek. There's no -- first of all, they've offered no
9 evidence, no documentary evidence whatsoever. I mean, we have
10 testimony, but it's vague testimony mostly from a volunteer board
11 member who spends maybe two hours a week, who acknowledged that
12 there's no audited financial statements yet. The last financial
13 statements they got had a going -- a positive going concern
14 opinion from their auditors.

15 The information we got wasn't clear enough. They don't
16 -- didn't give you the evidence that you need on that factor, but
17 frankly, that's not the strongest factor here for us. There are
18 other major and fatal deficiencies in their case. As I said, the
19 third circuit also requires that the harm be immediate. The
20 witness, when I asked him is bankruptcy imminent, he said no.
21 They don't have any concrete plans. They contemplate it.

22 Frankly, it may be overdue. I don't know. That's not
23 -- it's for them to decide, not me. But what you didn't hear was
24 immediate harm. What you heard is he, at least, the volunteer
25 treasurer has been thinking about this since January. They filed

1 their motion in June and they're asking for concerts as early --
2 you know, the earliest concerts in September. So they haven't
3 satisfied the immediacy requirement, either. They also haven't
4 shown that the relief they seek is necessary.

5 I get that they would prefer to play at Verizon Hall.
6 I get that they like it better or maybe there's -- you know,
7 there's a pit for a chorus there that they'd like to use.
8 Frankly, there are a lot of people, a lot of nonprofit and other
9 organizations who would like to use our facility, too. They pay
10 for it, they rent it and that's what allows us to keep the lights
11 on.

12 As Your Honor's questions reflected, there is a public
13 interest here and it's not just the POPS interest. This facility
14 is used by many other organizations, who again -- we charge rent.
15 They pay rent. They pay for the services. They pay the people
16 who come in and do the work. We can't continue to host an
17 organization that doesn't pay and get stuck with the bill. We're
18 not going to let the ushers go without getting paid for their
19 time.

20 We're not going to -- we're going to pay the electric
21 bill. We're going to pay the police. We're going to pay
22 security. We're going to pay the ticket takers, but it shouldn't
23 be on us. Everybody else pays for it. They have a contract to
24 pay for it and they haven't. They hope they can turn it around.
25 They hope they can convince sponsors to come back. Hope --I'll

1 leave it at that.

2 We have an obligation to more than just the POPS to use
3 the facility and to handle it responsibly and we have a right to
4 expect to be paid, but back to the necessary question. They have
5 not shown that it's necessary for them to play. They may want
6 to. But is it necessary for them to make money? They can
7 perform concerts at other venues, whether it's the Met or
8 elsewhere. If the venue is too small for their taste, maybe they
9 put on a smaller concert or they use less musicians and they make
10 money in smaller increments.

11 Get out there and work and make money. They have the
12 ability to perform. They have the ability to sell so-called one-
13 off concerts to make money to pay off their debts. They don't
14 need to only perform symphonic concerts in the -- on the holidays
15 in Verizon Hall and -- for subscription purchasers. You even
16 heard the distinction between like the subscription ticket and
17 the one-off ticket. Sell more one off tickets then.

18 Then they have the ability to generate -- to go out and
19 make money, if the business is run well. But in any event, they
20 haven't shown that the only way that they can survive is to ask
21 us to foot the bill again for a series of concerts that they
22 likely -- very likely won't pay for. So it's not necessary. You
23 saw the pictures of the Met. There's other venues that they
24 might use. But in any event, they haven't shown that it's
25 necessary.

1 They certainly have -- you know, Mr. DeStefano talked
2 about essential facility. That's merits, but if I ever get a
3 chance to address the merits, that's a dead loser, but I
4 understand that's not what we're here to talk about today. They
5 haven't -- also, Your Honor, they haven't shown that the relief
6 they seek is sufficient to avoid the problems. It's not
7 necessary, but it's also not sufficient. I think you heard we
8 have a plan, but you didn't hear any details.

9 If they've gotten 1.1 million in tickets that they've
10 sold that they want to, you know, use as credits, how many
11 concerts are they going to have to perform before they can
12 actually make dollar one on new tickets? And how do they pay off
13 their musicians? How they pay their old debt to us, much less,
14 how do they pay for the cost of the new concerts? This constant
15 like robbing Peter to pay Paul.

16 Well, we'll -- you know, we'll perform the next concert
17 and that'll pay for the one two times ago and then maybe next
18 time we'll catch up a little bit more. You know, that's been
19 going on for years. It has the feeling of inevitability. I get
20 it, Your Honor. But it's -- but again, so they haven't shown
21 that if you give them this order, if you were to compel us to do
22 business with them, despite this history with them, that somehow
23 that will be sufficient to solve their problems, it won't be.

24 They don't even have -- they don't have an answer at
25 all to how they're going to perform without musicians. You heard

1 that. You heard that repeatedly. They don't have musicians to
2 play. And so, if they don't even have musicians, think what
3 happens. We end up booking -- we end up reserving the space and
4 then they never show up. Talk about injury to your reputation,
5 harm to the Kimmel center.

6 I realize that's a different element that isn't the
7 focus of this hearing, but it -- but I can't ignore it, Your
8 Honor. And it is something that Your Honor is required to
9 consider as one of the four elements on their motion. It's the
10 third. The first two are most important. I get it. But please,
11 your Honor, don't forget the impact that this has on others,
12 including my clients. Something that we take very seriously.

13 Yeah, they relied on goodwill. They got a lot of
14 goodwill. They got a lot of goodwill for years. But at some
15 point enough is enough. How many notices of fault? How many
16 warnings? How many second chances? How many payment plans do we
17 have to give them before enough is enough? Particularly when the
18 agreement they had and rates that they negotiated is now expired.

19 Your Honor, thank you again for your attention and I'm
20 happy to answer any questions you have. Otherwise, I'll sit
21 down.

22 THE COURT: Thank you very much. Okay. It is my
23 intent to issue my ruling today from the bench, so I am going to
24 ask for approximately 20 minutes, so I can get my ducks in a row.
25 Thank you.

1 MR. DESTEFANO: Thank you, Your Honor.

2 THE BAILIFF: All rise.

3 (Recess taken from 4:01 p.m. to 4:53 p.m.)

4 THE COURT: Have a seat. Thank you for your patience.
5 Federal Rule of Civil Procedure 65 governs this Court's issuance
6 of preliminary injunctions. A preliminary injunction, however,
7 is not granted as a matter of right. Preliminary injunction is
8 an extraordinary and drastic measure and one that should not be
9 granted unless the movant, in this case The POPS, must be clear
10 showing carry the burden of persuasion.

11 Therefore, this Court recognizes the principle that
12 preliminary injunction should be issued only in a clear and plain
13 case. To grant a preliminary injunction, the Plaintiff must
14 establish the likelihood of success on the merits, that they will
15 suffer irreparable harm if the injunction is denied, and that
16 granting preliminary relief will not result in a greater harm to
17 the nonmoving party, and that the public interest favors such
18 relief.

19 This Court follows Third Circuit precedent holding that
20 the first two factors, the likelihood of success on the merits
21 and the likelihood to suffer irreparable harm are the most
22 critical to consider and thus the gateway factors as outlined in
23 Reilly vs. City of Harrisburg.

24 This Court finds no reason to address the merits of the
25 likelihood of success on the antitrust claims. If Plaintiff

1 fails to meet their burden regarding either of the gateway
2 factors, whether the likelihood of success or irreparable harm,
3 then this Court need not consider the two remaining factors.
4 This Court will focus on whether the Plaintiff has satisfied the
5 second gateway factor. Will The POPS suffer irreparable harm if
6 the injunction is denied. As conceded by both parties, Plaintiff
7 seeks a mandatory injunction. And this Court will therefore
8 apply the heightened standard as outlined in NSCRO vs. New Castle
9 County (phonetic).

10 The law is clear in this circuit. In order to
11 demonstrate irreparable harm, the Plaintiff must demonstrate
12 potential harm, which cannot be addressed by a legal or equitable
13 remedy following a trial. The issuance of the injunction must be
14 the only way of protecting the Plaintiff from the harm alleged as
15 outlined in Campbell Soup Company.

16 The Third Circuit has stated that the mere risk of
17 irreparable harm is not enough. But rather, a Plaintiff must
18 present a clear showing of immediate irreparable injury.
19 Specifically, in Winter vs. NRDC, the supreme court has cautioned
20 that the issuance of a preliminary injunction based only on the
21 possibility of irreparable harm is inconsistent with the
22 characterization of injunctive relief as an extraordinary remedy.

23 Plaintiffs contend that they face irreparable harm
24 because they will be forced to consider filing for bankruptcy
25 given their current financial situation. But it is not

1 sufficient that the requisite fear, injury, or harm is nearly
2 serious or substantial in terms of time, money, and energy as
3 outlined in Glasco vs. Hills. Proving that the economic loss will
4 force a business to shutdown demands meeting a significant
5 threshold for irreparable harm. On its face, Plaintiff's
6 contention that it will consider filing for bankruptcy is
7 undercut by the direct testimony of John Meko, stating a
8 bankruptcy filing is not imminent.

9 This Court finds that there's insufficient evidence on
10 this record indicating that any filing of bankruptcy, either
11 involuntary or voluntary is imminent. Additionally, Encore has
12 failed to provide invoices regarding debts owed, the specificity
13 of those debts, nor any current financial statements regarding
14 the amount of cash on hand or credit available to them.

15 While Mr. Meko has alluded to the fact that projections
16 of return, corporate sponsorships, and patrons were made based on
17 the loss of goodwill, none of those projections were provided to
18 this Court.

19 The Third Circuit has cautioned against issuing a
20 preliminary injunction where the record lacked concrete evidence
21 showing that the Plaintiff was on the verge of bankruptcy, let
22 alone that it was suffering irreparable injury from the
23 Defendant's individual actions as outlined In Re Arthur
24 Treacher's Franchisee Litigation.

25 In Figuerroa vs. Precision Surgical, the Third Circuit

1 has held that the district court is justified in refusing to
2 grant a preliminary injunction even when it will potentially
3 destroy a business. If the loss is capable of ascertainment and
4 award a final judgment if the petitioner prevails. Plaintiffs
5 contend that their financial future and the very existence of The
6 Philly POPS hinges on the outcome of this motion. However, there
7 are a myriad of factors that have contributed to the financial
8 deficiencies of The Philly POPS and must be remedied in order for
9 this institution to remain solvent.

10 Specifically, evidence was placed on this record that
11 there's current a civil case pending in the Eastern District of
12 Pennsylvania filed by the American Federation of Musicians based
13 on allegations of the musicians of The Philly POPS were not paid.
14 The fact that those musicians were not paid is undisputed. No
15 credible evidence has been placed on this record that musicians
16 that have historically performed with The POPS would be willing
17 to do so in light of the ongoing wage disputes between the
18 American Federation of Musicians and The Philly POPS.

19 Additionally, Plaintiffs have not presented sufficient
20 evidence to demonstrate that patrons are likely to return to see
21 The POPS based on their previous inability to fulfill tickets
22 sold for prior events. Plaintiffs have also argued that they
23 have and will continue to suffer reputational harm if an
24 injunction is denied.

25 The Third Circuit has previously refused to make

1 extended causal inferences to find irreparable harm where
2 evidence in the record did not demonstrate the defendant's
3 actions directly contributed to the alleged reputational harm.
4 And that's at Bennington Foods LLC. vs. St. Croix Renaissance
5 Group.

6 In this case, Plaintiff has not created a sufficient
7 causal link between the eviction of The Philly POPS from the
8 Kimmel Center and the alleged reputational harm. There is
9 evidence on the record that The Philly POPS financial
10 mismanagement led to the eviction from the Kimmel Center. That
11 they canceled or rescheduled event at The Met just two days prior
12 to that performance. And additionally, the action filed in this
13 district by the American Federation of Musicians against Encore
14 Series, Inc. on March 17th of 2023 for the nonpayment of wages to
15 musician, further damaged The POPS reputation.

16 This Court finds, based on the record and controlling
17 case law, Plaintiff has failed to meet the heightened burden
18 necessary to clearly prove immediate irreparable harm.
19 Therefore, the Plaintiff's motion is denied. Thank you all very
20 much.

21 MR. DESTEFANO: Just a question. Will you be issuing a
22 footnote as order or a memo and order?

23 THE COURT: I took my time issuing this one from the
24 bench so that I will not need to create an additional footnoted
25 order. I will issue a written order, but my findings of facts

1 and conclusions of law are now on this record.

2 MR. DESTEFANO: Okay.

3 THE COURT: Thank you very much.

4 MR. REED: Thank you.

5 THE CLERK: All rise.

6 (Proceedings adjourned at 5:00 p.m.)

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CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: July 28, 2023



Jessica B. Cahill, CER/CET-708